GALE ENCYCLOPEDIA OF

AMERICAN LAW

3rd Edition

Volume 6: J to Ma

Formerly West's Encyclopedia of American Law

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3RD EDITION

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J to Ma

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Gale Encyclopedia of American Law, 3rd Edition

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DEDICATION

Gale Encyclopedia of American Law (GEAL) is dedicated to librarians and library patrons throughout the United States and beyond. Your interest in the American legal system helps to expand and fuel the framework of our Republic.

Contents

Preface

The U.S. legal system is admired around the world for the freedoms it allows the individual and the fairness with which it attempts to treat all persons. On the surface, it may seem simple, yet those who have delved into it know that this system of federal and state constitutions, statutes, regulations, and common-law decisions is elaborate and complex. It derives from the English common law, but includes principles older than England, along with some principles from other lands. The U.S. legal system, like many others, has a language all its own, but too often it is an unfamiliar language: many concepts are still phrased in Latin. The third edition of *Gale Encyclopedia of American Law (GEAL)*, formerly *West's Encyclopedia of American Law*, explains legal terms and concepts in everyday language. It covers a wide variety of persons, entities, and events that have shaped the U.S. legal system and influenced public perceptions of it.

MAIN FEATURES OF THIS SET

Entries

This *Encyclopedia* contains nearly 5,000 entries devoted to terms, concepts, events, movements, cases, and persons significant to U.S. law. Entries on legal terms contain a definition of the term, followed by explanatory text if necessary. Entries are arranged alphabetically in standard encyclopedia format for ease of use. A wide variety of additional features provide interesting background and supplemental information.

Definitions

Every entry on a legal term is followed by a definition, which appears at the beginning of the entry and is italicized. The Dictionary of Legal Terms volume is a glossary containing all the definitions from *GEAL*.

Further Readings

To facilitate further research, a list of Further Readings is included at the end of a majority of the main entries.

Cross-References

GEAL provides two types of cross-references, within and following entries. Within the entries, terms are set in small capital letters—for example, LIEN—to indicate that they have their own entry in the *Encyclopedia*. At the end of the entries, related entries the reader may wish to explore are listed alphabetically by title.

Blind cross-reference entries are also included to direct the user to other entries throughout the set.

In Focus Essays

In Focus essays accompany related entries and provide additional facts, details, and arguments on particularly interesting, important, or controversial issues raised by those entries. The subjects covered include hotly contested issues, such as abortion, capital punishment, and gay rights; detailed processes, such as the Food and Drug Administration's approval process for new drugs; and important historical or social issues, such as debates over the formation of the U.S. Constitution.

Sidebars

Sidebars provide brief highlights of some interesting facet of accompanying entries. They

complement regular entries and In Focus essays by adding informative details. Sidebar topics include trying juveniles as adults, the Tea Party Movement, and the branches of the U.S. armed services. Sidebars appear at the top of a text page and are set in a box.

Biographies

GEAL profiles a wide variety of interesting and influential people—including lawyers, judges, government and civic leaders, and historical and modern figures—who have played a part in creating or shaping U.S. law. Each biography includes a timeline, which shows important moments in the subject's life as well as important historical events of the period. Biographies appear alphabetically by the subject's last name.

ADDITIONAL FEATURES OF THIS SET

Enhancements Throughout *GEAL*, readers will find a broad array of photographs, charts, graphs, manuscripts, legal forms, and other visual aids enhancing the ideas presented in the text.

Appendixes

Four appendix volumes are included with *GEAL*, containing hundreds of pages of documents, laws, manuscripts, and forms fundamental to and characteristic of U.S. law.

Milestone Cases in the Law

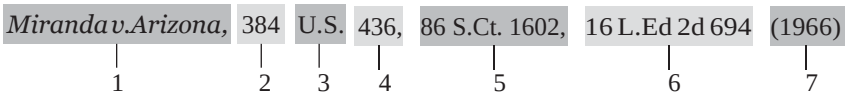
Special Appendix volumes entitled Milestones in the Law, allows readers to take a close look at landmark cases in U.S. law. Readers can explore the reasoning of the judges and the arguments of the attorneys that produced major decisions on important legal and social issues. Included in each Milestone are the opinions of the lower courts; the briefs presented by the parties to the U.S. Supreme Court; and the decision of the Supreme Court, including the majority opinion and all concurring and dissenting opinions for each case.

Primary Documents

There is also an Appendix volume containing more than 60 primary documents, such as the English Bill of Rights, Martin Luther King Jr.'s Letter from Birmingham Jail, and several presidential speeches.

Citations

Wherever possible, *GEAL* entries include citations for cases and statutes mentioned in the text. These allow readers wishing to do additional research to find the opinions and statutes cited. Two sample citations, with explanations of common citation terms, can be seen below and opposite.



1. *Case title.* The title of the case is set in italics and indicates the names of the parties. The suit in this sample citation was between Ernesto A. Miranda and the state of Arizona.
2. *Reporter volume number.* The number preceding the reporter name indicates the reporter volume containing the case. (The volume number appears on the spine of the reporter, along with the reporter name).
3. *Reporter name.* The reporter name is abbreviated. The suit in the sample citation is from the reporter, or series of books, called *U.S. Reports*, which contains cases from the U.S. Supreme Court. (Numerous reporters publish cases from the federal and state courts.)
4. *Reporter page.* The number following the reporter name indicates the reporter page on which the case begins.
5. *Additional reporter page.* Many cases may be found in more than one reporter. The suit in the sample citation also appears in volume 86 of the *Supreme Court Reporter*, beginning on page 1602.
6. *Additional reporter citation.* The suit in the sample citation is also reported in volume 16 of the *Lawyer's Edition*, second series, beginning on page 694.
7. *Year of decision.* The year the court issued its decision in the case appears in parentheses at the end of the citation.

Brady Handgun Violence Prevention Act, Pub. L. No. 103–159, 107 Stat. 1536 (18 U.S.C.A. §§ 921–925A)

1 2 3 4 5 6 7 8

1. *Statute title.*
2. *Public law number.* In the sample citation, the number 103 indicates this law was passed by the 103d Congress, and the number 159 indicates it was the 159th law passed by that Congress.
3. *Reporter volume number.* The number preceding the reporter abbreviation indicates the reporter volume containing the statute.
4. *Reporter name.* The reporter name is abbreviated. The statute in the sample citation is from *Statutes at Large.*
5. *Reporter page.* The number following the reporter abbreviation indicates the reporter page on which the statute begins.
6. *Title number.* Federal laws are divided into major sections with specific titles. The number preceding a reference to the U.S. Code stands for the section called Crimes and Criminal Procedure.
7. *Additional reporter.* The statute in the sample citation may also be found in the *U.S. Code Annotated.*
8. *Section numbers.* The section numbers following a reference to the *U.S. Code Annotated* indicate where the statute appears in that reporter.

How to Use This Book

1 Article Title

2 Definition in italics with Latin translation provided

3 First-level subhead

4 Sidebar expands upon an issue addressed briefly in the article

5 Quotation from subject of biography

6 Biography of contributor to American law

7 Timeline for subject of biography, including general historical events and life events

8 In Focus article examines a controversial or complex aspect of the article topic

9 Further readings to facilitate research

10 Cross references at end of article

11 See reference

12 Full cite for case

13 Internal cross-reference to entry within WEAL

70 CAUSE

than $100,000. During the war, Catron continued to support the Union by broadly interpreting the federal government's war powers. In one case, he wrote an opinion refusing to release a prisoner if evidence showed that he was a Confederate sympathizer. After 1862, Catron also worked hard to keep order in the states forming his new circuit: Tennessee, Arkansas, Louisiana, Texas, and Kentucky. He stayed in close touch with President ABRAHAM LINCOLN and worked hard to keep the federal judiciary effective during the war.

On May 30, 1865, Catron, one of the last embodiments of Jacksonian democracy to leave the national scene, died in his adopted city of Nashville.

FURTHER READINGS

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Tennessee Dept. of State. "Catron, John (1786–1865) Papers 1833–[1835–1862]–1918." Nashville, TN: Tennessee State Library and Archives.

CROSS REFERENCES

Judicial Review; Native American Rights.

CAUSA MORTIS

[Latin, In contemplation of approaching death.] *A phrase sometimes used in reference to a deathbed gift, or a gift* causa mortis, *since the giving of the gift is made in expectation of approaching death. A gift causa mortis is distinguishable from a gift inter vivos, which is a gift made during the donor's (the giver's) lifetime.*

The donor of the gift of PERSONAL PROPERTY must expect to die imminently from a particular ailment or event. This has important consequences in terms of the donor's ability to revoke the gift.

For example, an elderly man is suffering from pneumonia and believes he is going to die as a result of the sickness. He tells his grandson that if he dies, he will give the grandson his pocket watch. If the man recovers and wants to retain his watch, he will be able to do so, because a gift *causa mortis* is effective only if made in CONTEMPLATION OF DEATH due to a known condition and the donor actually dies as a result of that condition.

A gift *causa mortis* is taxed under federal estate tax law in the same way as a gift bequeathed by a will.

CAUSE

A suit, litigation, or action. Any question, civil or criminal, litigated or contested before a court of justice.

Cause and Causality in American Law

If an individual is fired from a job at the bank for embezzlement, he or she is fired *for cause*—as distinguished from decisions or actions considered to be arbitrary or capricious.

In CRIMINAL PROCEDURE, PROBABLE CAUSE is the reasonable basis for the belief that someone has committed a particular crime. Before someone may be arrested or searched by a police officer without a warrant, probable cause must exist. This requirement is imposed to protect people from unreasonable or unrestricted invasions or intrusions by the government.

In the law of torts, the concept of causality is essential to a person's ability to successfully bring an action for injury against another person. The injured party must establish that the other person brought about the alleged harm. A defendant's liability is contingent upon the connection between his or her conduct and the injury to the PLAINTIFF. The plaintiff must prove that his or her injury would not have occurred but for the defendant's NEGLIGENCE or intentional conduct.

Actual, Concurrent, and Intervening Cause

The *actual cause* is the event directly responsible for an injury. If one person shoves another, thereby knocking the other person out an open window and he or she breaks a leg as a result of the fall, the shove is the actual cause of the injury. The IMMEDIATE CAUSE of the injury in this case would be the fall, since it is the cause that came right before the injury, with no intermediate causes. In some cases the actual cause and the immediate cause of an injury may be the same.

Concurrent causes are events occurring simultaneously to produce a given result. They are contemporaneous, but either event alone would bring about the effect that occurs. If one

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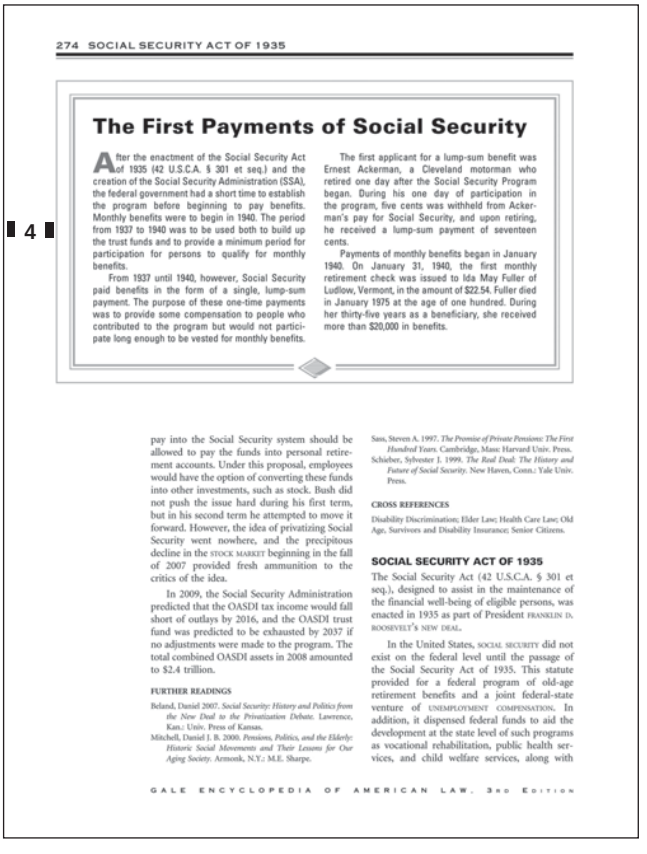

274 SOCIAL SECURITY ACT OF 1935

The First Payments of Social Security

After the enactment of the Social Security Act of 1935 (42 U.S.C.A. § 301 et seq.) and the creation of the Social Security Administration (SSA), the federal government had a short time to establish the program before beginning to pay benefits. Monthly benefits were to begin in 1940. The period from 1937 to 1940 was to be used both to build up the trust funds and to provide a minimum period for participation for persons to qualify for monthly benefits.

From 1937 until 1940, however, Social Security paid benefits in the form of a single, lump-sum payment. The purpose of these one-time payments was to provide some compensation to people who contributed to the program but would not participate long enough to be vested for monthly benefits.

The first applicant for a lump-sum benefit was Ernest Ackerman, a Cleveland motorman who retired one day after the Social Security Program began. During his one day of participation in the program, five cents was withheld from Ackerman's pay for Social Security, and upon retiring, he received a lump-sum payment of seventeen cents.

Payments of monthly benefits began in January 1940. On January 31, 1940, the first monthly retirement check was issued to Ida May Fuller of Ludlow, Vermont, in the amount of $22.54. Fuller died in January 1975 at the age of one hundred. During her thirty-five years as a beneficiary, she received more than $20,000 in benefits.

pay into the Social Security system should be allowed to pay the funds into personal retirement accounts. Under this proposal, employees would have the option of converting these funds into other investments, such as stock. Bush did not push the issue hard during his first term, but in his second term he attempted to move it forward. However, the idea of privatizing Social Security went nowhere, and the precipitous decline in the STOCK MARKET beginning in the fall of 2007 provided fresh ammunition to the critics of the idea.

In 2009, the Social Security Administration predicted that the OASDI tax income would fall short of outlays by 2016, and the OASDI trust fund was predicted to be exhausted by 2037 if no adjustments were made to the program. The total combined OASDI assets in 2008 amounted to $2.4 trillion.

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Disability Discrimination; Elder Law; Health Care Law; Old Age, Survivors and Disability Insurance; Senior Citizens.

SOCIAL SECURITY ACT OF 1935

The Social Security Act (42 U.S.C.A. § 301 et seq.), designed to assist in the maintenance of the financial well-being of eligible persons, was enacted in 1935 as part of President FRANKLIN D. ROOSEVELT'S NEW DEAL.

In the United States, SOCIAL SECURITY did not exist on the federal level until the passage of the Social Security Act of 1935. This statute provided for a federal program of old-age retirement benefits and a joint federal-state venture of UNEMPLOYMENT COMPENSATION. In addition, it dispensed federal funds to aid the development at the state level of such programs as vocational rehabilitation, public health services, and child welfare services, along with

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IF SOMEONE HAS BEEN THE SUBJECT OF ILLEGAL LAW ENFORCEMENT ACTIVITIES, THEY SHOULD HAVE A DAY IN COURT. AND THAT'S WHAT THE COURTS ARE THERE FOR, TO PROTECT THE RIGHTS OF INDIVIDUALS AGAINST THE GOVERNMENT OR ANYONE ELSE WHO VIOLATES THEIR RIGHTS.
—SAMUEL ALITO

Additionally, critics assailed the absence of alimony provisions in Texas FAMILY LAW as being unduly harsh. In a large number of divorces where neither spouse had acquired substantial assets during the marriage, Texas courts were powerless to compensate spouses who had sacrificed educational and career opportunities, since in such situations there were essentially no assets to divide in the first place. As a result, spouses who successfully pursued educational or career opportunities at the expense of their partner were allowed to walk away from the marriage "scot-free."

Despite the late twentieth-century universality of alimony laws in the all 50 states, lawmakers in some jurisdictions continued to propose legislation that would abolish it. In 1999 several Iowa legislators proposed a bill to abolish alimony, arguing that alimony laws provide incentive to get divorced. The bill never passed.

Because alimony is an award for support and maintenance that one spouse may be compelled to pay to another after DISSOLUTION of the marriage, it would seem to follow that no alimony could be awarded to a spouse following an ANNULMENT, which treats the marriage relationship as if it had never existed. In fact, alimony is not awarded to spouses under any conditions following the annulment of a marriage in most jurisdictions. However, in some jurisdictions the enforcement of a flat PROHIBITION of alimony awards to spouses whose marriages have been annulled has sometimes been found to impose unnecessary hardship on a spouse, usually the wife, especially where the parties have lived together for a considerable period of time. Consequently, judicial and legislative exceptions have been created to the basic rule of treating an annulled marriage as if it had never existed, for the purposes of determining whether an alimony award is appropriate. Under these exceptions, temporary as well as permanent alimony have been awarded.

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A Mensa Et Thoro; Child Support; Damages; Divorce; Family Law; Husband and Wife; Marriage; No Fault Divorce; Sex Discrimination.

ALITO, SAMUEL ANTHONY, JR.

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SAMUEL ALITO is a conservative justice appointed to the U.S. Supreme Court in 2006. Upon his confirmation, he became the 110th associate justice in the Court's history and only the second Italian-American. He replaced Sandra Day O'Connor on the Court.

Alito was born on April 1, 1950, in Trenton, New Jersey. His father emigrated from Italy as a boy and became a high school teacher. His father later changed careers in the 1950s to work as the research director of a nonpartisan agency that analyzed legislation for state legislators. Alito's mother was an elementary school principal. Alito excelled as a student, deciding on a legal career after discovering a special affinity for in-depth research and finely honed argument on the high school debate team. He graduated as valedictorian of his class and headed off to Princeton University in 1968.

After receiving his undergraduate degree in 1972, Alito pursued a law degree at Yale Law School, where he graduated in 1975. At Yale he served as an editor of the *Yale Law Journal* and quickly became known as a traditionalist with a quick intellect. It was a reputation that he was to carry with him throughout his working life. In 1976 Alito was hired as a law clerk by Third CIRCUIT COURT of Appeals Judge Leonard I. Garth (who eventually became a colleague when Alito was named to the same bench). After clerking for Garth, Alito spent 1977 to 1981 as an assistant U.S. attorney in New Jersey. He then went to Washington, D.C., to work for the DEPARTMENT OF JUSTICE, first as an assistant to the SOLICITOR GENERAL from 1981 to 1985 and then as a deputy assistant attorney general from 1985 to 1987. In the former position, he argued several cases before the U.S. Supreme Court. By 1987 Alito returned to New Jersey as U.S. attorney, in which role he handled cases from ORGANIZED CRIME to CHILD PORNOGRAPHY.

Alito took a seat on the U.S. Court of Appeals for the Third Circuit in 1990. While his time there undisputedly marked him as a solidly conservative JURIST, it also showed a man unwilling to express his political views openly. He was widely respected by Democrats and

Republicans alike, and few saw him as either rigid or an ideologue. Still, one of Alito's controversial opinions was his lone DISSENT in a 1991 case that struck down a Pennsylvania law requiring married women seeking abortions to inform their husbands *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 947 F. 2d 682). He also concluded in a 1998 opinion that a holiday display that included secular symbols along with religious ones did not violate the FIRST AMENDMENT. By contrast, Alito voted with the majority to find a ban on late-term abortions unconstitutional where there is no exception considering the health of the mother. These, and the broad array of other published opinions stemming from 15 years on the bench, were to come under intense scrutiny when Alito was nominated to replace retiring U.S. Supreme Court Justice O'Connor in October 2005.

Alito's nomination came in the wake of the withdrawal of previous nominee Harriet E. Miers, whom many believed was unqualified for the position. It also came at a time when President GEORGE W. BUSH was lagging in the polls and there was increasing acrimony between parties in the Senate. The situation was further sharpened by O'Connor's pivotal role as a centrist justice on a fairly divided Court, thus making the stakes particularly high for both parties in finding a suitable replacement. In short, there was little doubt that Alito's confirmation hearings were destined to be difficult and time-consuming, with conservative and liberal agendas likely to take precedence.

Several groups, including the AMERICAN CIVIL LIBERTIES UNION, strongly opposed Alito's nomination. According to the ACLU, Alito had displayed a "willingness to support government actions that abridge individual freedoms." In reviewing Alito's professional qualifications, though, a committee of the AMERICAN BAR ASSOCIATION concluded that Alito was "well-qualified" to serve on the Court.

Samuel Alito. STEVE PETTEWAY, COLLECTION OF THE SUPREME COURT OF THE UNITED STATES

As expected, the ideological battle between the parties caused great friction and talk of filibustering the Alito nomination. Despite Democratic attempts to block a vote on the nomination by filibustering, a Senate closure motion ended debate by a 72-25 vote. The closure motion forced a vote on the nomination, and the Senate confirmed Alito by a 58-42 vote, the smallest margin since CLARENCE THOMAS

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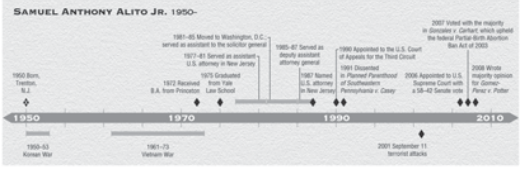

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IN FOCUS

THE FUTURE OF SOCIAL SECURITY

The payment of OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (OASDI) benefits has been a cornerstone of U.S. social welfare policy since the establishment of the Social Security Administration (SSA) in 1935. At the same time, the long-term financial stability of OASDI has been a constant worry. In the early 2000s, concerns about Social Security mounted as policy makers assessed the impact of the retirement of the "Baby Boom" generation. Many younger people raised the issue of "generation equity." They express doubt that Social Security benefits will be available when they retire and anger that they will be forced to pay, through payroll taxes, for the baby boomers' retirement benefits.

Reform of the Social Security system has always been a politically charged subject. Retirees and those approaching retirement form a strong LOBBYING force, and they zealously protect their benefits. Employers and employees are equally vocal in their opposition to higher payroll taxes to fund OASDI. Thus, changes in Social Security required bipartisan support, which materialized in the face of an impending Social Security crisis. The 1982–1983 National Commission on Social Security Reform successfully secured from Congress the short-term financing of OASDI. As a result, Congress passed a series of laws meant to accumulate surpluses as a hedge against future burdens. The Social Security surplus is the amount by which revenue from the federal payroll tax exceeds the amount of Social Security benefits paid out.

Shortly after these new laws went into effect, Social Security began running a surplus. Surplus Social Security revenue can be used to fund other government programs and to help retire the national debt. During the favorable economic climate of the late 1990s, Congress began to use the surplus to pay down the federal debt, hoping to better position the government to meet its obligations to future retirees. Also, in 2000, the federal government generated enough revenue so that the entire Social Security surplus was available for paying off debt.

The state of Social Security became a major campaign issue in the 2000 elections, with both Republicans and Democrats attempting to appear as though they were guardians of Social Security assets. Candidates from both parties promised to create a "lockbox," meaning that the Social Security surplus would be spent entirely on debt retirement. With the advent of fiscally lean years in the early 2000s, the lockbox approach was largely disregarded by politicians who advanced other ideas about what to do with Social Security surpluses. These ideas included using the surplus to help offset decreases in revenues brought about by tax cuts and using the surplus to fund new or expanded spending initiatives.

Analysts argue that the real issue often is clouded. It is not how to spend the surplus now, but how to maintain the long-term solvency of the Social Security trust fund. Planners estimate that the income from the trust fund will exceed expenses each year until 2017. The trust fund balances will then start to decline as investments are redeemed to meet the increased expenses from a swelling retired workforce. The SSA estimates that beginning in 2041, payroll taxes would have to rise to 28 percent to cover the projected deficit.

In its 1996 report, the Social Security Administration's Advisory Council looked at various long-term financing options for OASDI. The council could not reach consensus on a specific long-term plan, but it did suggest several types of financing that represent a marked departure from previous efforts to fund Social Security. The council noted that past efforts have generally featured cutting benefits and raising tax rates on a "pay-as-you-go" basis. The council agreed that this approach must be changed and offered three ways of restoring financial solvency.

One approach, called Maintenance of Benefits (MB), calls for an increase in income taxes on OASDI benefits, a redirection of some revenue from other trust funds, and, most importantly, the ADOPTION of a plan allowing the federal government to invest a portion of the trust fund assets directly in common stocks. Rates of returns on stocks have historically exceeded those on federal government bonds, where all Social Security funds are invested. If the returns legislative changes. The final bill, signed into law in 1983 (Pub. L. 98-21, 97 Stat. 65), made numerous changes in the Social Security and Medicare Programs; these changes included taxing Social Security benefits, extending Social Security coverage to federal employees, and increasing the retirement age in the twenty-first century.

By the 1990s, however, concerns were again raised about the long-term financial viability of Social Security and Medicare. Various ideas and plans to ensure the financial stability of these programs were put forward. The budget committees in both the HOUSE OF REPRESENTATIVES and the SENATE established task forces to investigate proposals for Social Security reform. Other

The Supreme Court, in a unanimous decision (Justice WILLIAM H. REHNQUIST recused himself because he had served in the Nixon administration), recognized for the first time the general legitimacy of executive privilege. Nevertheless, Chief Justice WARREN E. BURGER, writing for the Court, rejected Nixon's claim of "an absolute, unqualified Presidential privilege of IMMUNITY from judicial process under all circumstances." Burger found that [a]bsent a claim of need to protect military, diplomatic, or sensitive national security secrets," the need to protect the confidentiality of presidential communications must give way to a legitimate request by the courts for information vital to a criminal prosecution. Burger noted that the judge would review the subpoenaed tapes in private to determine what portions should be released to the prosecutors. This confidential review would prevent sensitive, but irrelevant, information from being disclosed.

Nixon obeyed the order and turned the tapes over to the district court. When relevant portions were released, they revealed that the president had been intimately involved with the attempt to cover up White House involvement in the Watergate burglary. Less than three weeks after the Court announced its decision, Nixon resigned the presidency, thereby avoiding IMPEACHMENT by Congress.

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Nixon, Richard Milhous; Watergate.

11

NLRB

See NATIONAL LABOR RELATIONS BOARD.

NLRB V. JONES & LAUGHLIN STEEL CORP.

From the 1870s through the mid-1930s the U.S. Supreme Court was generally hostile to federal legislation that sought to regulate business through the use of the Constitution's COMMERCE CLAUSE. A conservative judiciary believed that the free market should govern economic activities; consequently laws that attempted to regulate labor relations were overturned. The Great Depression of the 1930s led to the presidential election in 1932 of FRANKLIN D. ROOSEVELT, who advocated an aggressive role for the federal government in national economic affairs. Congress consistently turned Roosevelt's legislative agenda into law yet the Supreme Court ruled these new laws unconstitutional. However, in the landmark case of *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 57 S. Ct. 615, 81 L. Ed. 893 (1937), the Court reversed course, paving the way for NEW DEAL legislation and a new judicial attitude toward the Commerce Clause.

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For generations LABOR UNIONS had confronted a business community that was hostile to the concept of COLLECTIVE BARGAINING. Therefore, the passage of the National Labor Relations Act (NLRA or WAGNER ACT) of 1935 (29 U.S.C.A. § 151 et seq.) was a dramatic recognition of workers' rights. The law gave workers the right to organize unions and to require employers to negotiate with a certified union. An elaborate administrative process was also established, headed by the National Labor Relations Board (NLRB). The NLRB was create to review complaints about alleged violations of the law and issue administrative sanctions against employers for retaliatory discharges based on union membership or organization activities. Employers vowed to test the constitutionality of the NLRA and the actions of the NLRB.

In July 1935, 13 employees of the Jones and Laughlin Steel Corporation plant in Aliquippa, Pennsylvania, were discharged for minor infractions of company rules. Most of these workers had been actively involved in a union. The union filed with the NLRB a charge of UNFAIR LABOR PRACTICES against the steel company, claiming that the discharges were because of union membership. At a subsequent NLRB hearing, Jones & Laughlin argued that the NLRA was unconstitutional because it regulated labor relations and not interstate commerce. Therefore, Congress had no authority to regulate labor relations. The NLRB rejected the argument and found that the company was the fourth largest steel producer in the United States and was clearly involved in interstate commerce. It ordered the workers reinstated and directed Jones & Laughlin to cease and

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v JACKSON, ANDREW

Andrew Jackson achieved prominence as a frontiersman, jurist, and military hero, and as seventh PRESIDENT OF THE UNITED STATES. His two administrations, famous for ideologies labeled Jacksonian Democracy, encouraged participation in government by the people, particularly the middle class.

Jackson was born March 15, 1767, in Waxhaw, South Carolina. In 1781 Jackson entered the military, fought in the Revolutionary War, and was subsequently taken prisoner and incarcerated at Camden, South Carolina. After his release he pursued legal studies in North Carolina and was admitted to the bar of that state in 1787.

Jackson relocated to Nashville in 1788 and established a successful law practice. Three years later, he married Rachel Donelson. When it was subsequently discovered that Mrs. Jackson was not legally divorced from her previous husband, Jackson remarried her in 1794 after her DIVORCE became final. His enemies, however, used the scandal to their advantage.

Jackson began his public service career in 1791 and performed the duties of prosecuting attorney for the Southwest Territory. He attended the Tennessee constitutional convention in 1796 and entered the federal government system in that same year.

As a member of the U.S. House of Representatives, Jackson represented Tennessee for a year before filling the vacant position of senator from Tennessee in the U.S. Senate during 1797 and 1798.

Jackson embarked on the judicial phase of his career in 1798, presiding as judge of the Tennessee Superior Court until 1804.

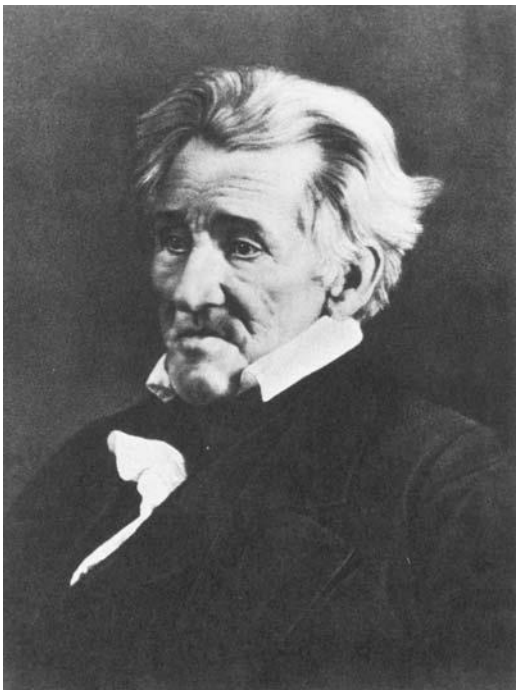
During the WAR OF 1812, Jackson returned to the military and was victorious at the Horseshoe Bend battle in 1814. He conquered the British at New Orleans at the close of the war, which resulted in national recognition as a war hero.

In 1818 Jackson was involved in a military incident that almost catapulted the United States into another war with Great Britain and Spain. Dispatched to the Florida border to quell Seminole Indian uprisings, Jackson misunderstood his orders, took control of the Spanish possession of Pensacola, and killed two British subjects responsible for inciting the Indians. Spain and Great Britain were in an uproar over the incident, but Secretary of State JOHN QUINCY ADAMS supported Jackson. The incident added to Jackson's popularity as a rugged hero.

Jackson sought the office of president of the United States in 1824 against HENRY CLAY, John Quincy Adams, and William Crawford. No single candidate received a majority of electoral votes, and the House of Representatives decided the election in favor of Adams. Four years later, Jackson defeated the incumbent Adams and began the first of two terms as chief executive.

EVERY MAN WHO HAS BEEN IN OFFICE A FEW YEARS BELIEVES HE HAS A LIFE ESTATE IN IT, A VESTED RIGHT. THIS IS NOT THE PRINCIPLE OF OUR GOVERNMENT. IT IS ROTATION OF OFFICE THAT WILL PERPETUATE OUR LIBERTY.

—ANDREW JACKSON



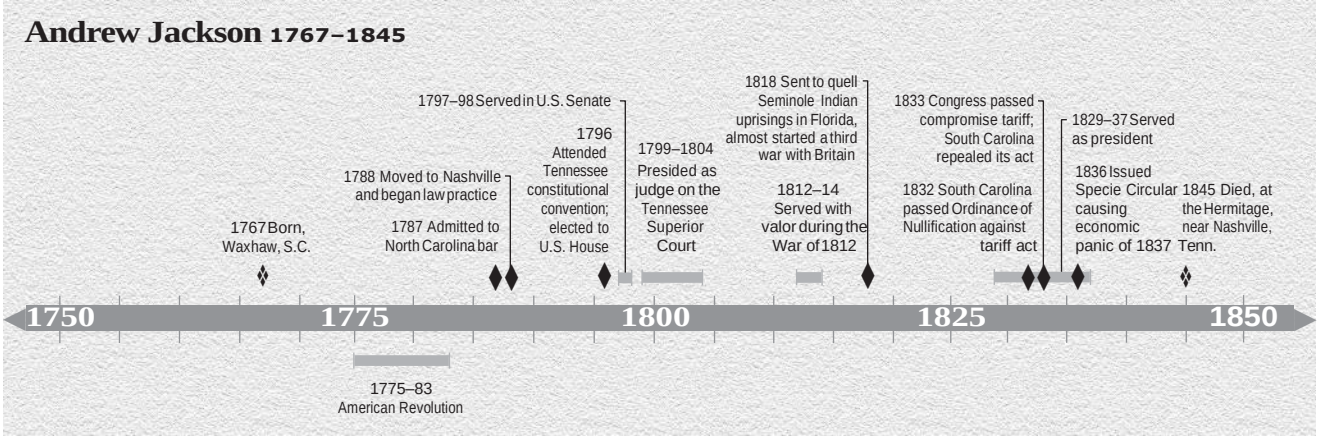
Andrew Jackson.
LIBRARY OF CONGRESS

During his first administration, Jackson relied on a group of informal advisers known as the Kitchen Cabinet. The unofficial members included journalists and politicians, as opposed to the formal cabinet members traditionally involved in policymaking. He also initiated the spoils system, rewarding dutiful and faithful party members with government appointments, regardless of their qualifications for the positions. Many of Jackson's intimate associations did not include members from the traditional families associated with politics, and public dissatisfaction came to a head with the marriage of his Secretary of War John Eaton to the provincial Margaret O'Neill. The social politics employed by cabinet members and their wives, particularly VICE PRESIDENT and Mrs. JOHN C. CALHOUN, caused much upheaval in the Jackson cabinet, and the eventual resignation of Eaton.

Calhoun and Jackson disagreed again in 1832 over a protective tariff, which Calhoun believed was not beneficial to the South. Calhoun initiated the policy of nullification, by which a state could judge a federal regulation null and void and, therefore, refuse to comply with it if the state believed the regulation to be adverse to the tenets of the Constitution. Calhoun resigned from the office of vice president after South Carolina adopted the nullification policy against the tariff act, and Jackson requested the enactment of the Force Bill from Congress to authorize his use of MILITIA, if necessary, to enforce federal law. The Force Bill proved to be solely a strong threat, because Jackson sympathized with the South and advocated the drafting of a tariff compromise. Henry Clay was instrumental in the creation of this agreement, which appeased South Carolina.

The most significant issue during Jackson's term was the controversy over the BANK OF THE UNITED STATES. The bank became a topic in the 1832 presidential campaign and continued into the second administration of the victorious Jackson.

The charter of the bank expired in 1836, but Henry Clay encouraged the passage of a bill to secure its recharter in 1832. Jackson was against the powerful bank and overruled the recharter. He proceeded to transfer federal funds from the bank to selected state banks, called "pet banks," which significantly diminished the power of the bank. Secretary of Treasury Louis McLane refused to remove the funds and was dismissed; similarly, the new treasury secretary, W. J. Duane,



also refused. Jackson replaced him with ROGER B. TANEY, who supported Jackson's views and complied with his wishes. In response to this loyalty, Jackson subsequently nominated Taney as a U.S. Supreme Court justice in 1836.

In 1836 Jackson faced another financial crisis. He issued the Specie Circular of 1836, which declared that all payments for public property must be made in gold or silver, as opposed to the previous use of paper currency. This proclamation precipitated the economic panic of 1837, which ended Jackson's second term and extended into the new presidential administration of MARTIN VAN BUREN.

Jackson spent his remaining years in retirement at his estate in Tennessee, "The Hermitage," where he died on June 8, 1845.

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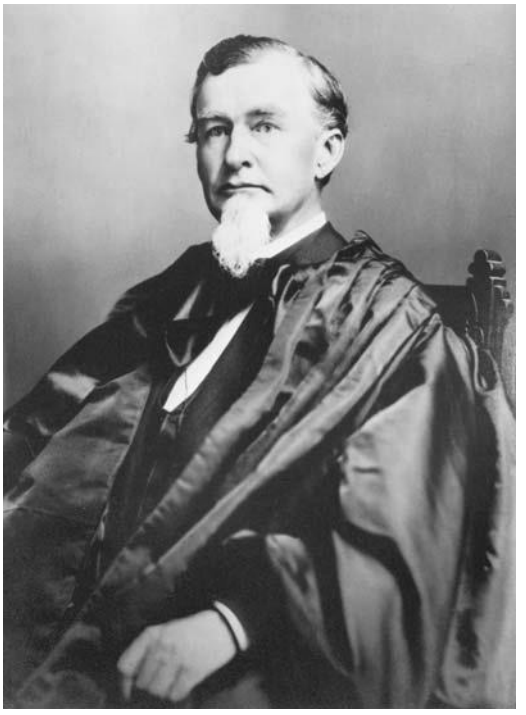
v JACKSON, HOWELL EDMUNDS

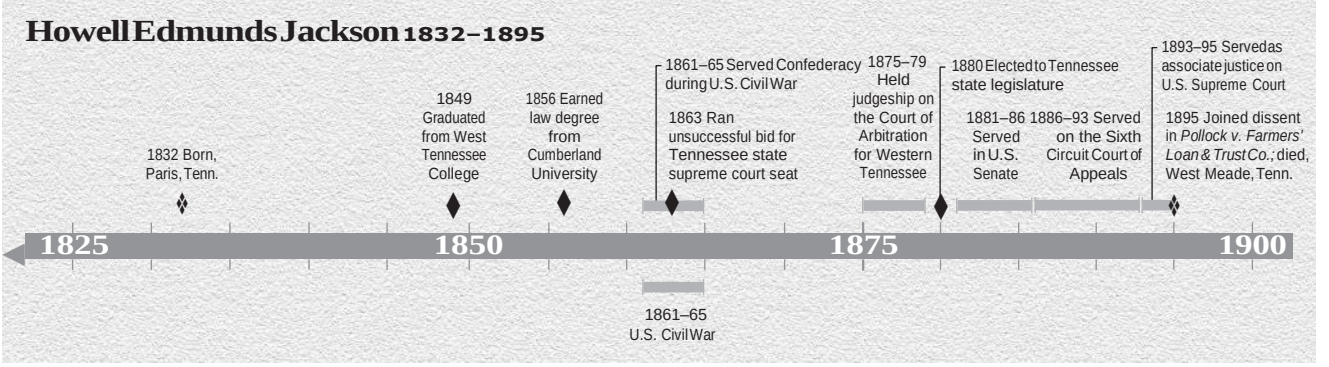
Howell Edmunds Jackson was a U.S. senator, federal judge on the U.S. Sixth CIRCUIT COURT of Appeals, and U.S. Supreme Court justice. Jackson toiled diligently without fanfare for many years before garnering widespread attention for the last case he heard while sitting on the Supreme Court, Pollock v. Farmers' Loan & Trust Co., 158 U.S. 601, 15 S. Ct. 912, 39 L. Ed. 1108 (1895).

Jackson was born April 8, 1832, in Paris, Tennessee. He graduated from West Tennessee College in 1849, then studied for a time at the University of Virginia. He read the law with a Tennessee Supreme Court judge for a year, and obtained his law degree from Cumberland University in Lebanon, Tennessee, in 1856. Thereafter, he practiced law in Jackson and Memphis. Although Jackson opposed Tennessee's secession in the Civil War, he served the Confederacy as a receiver of confiscated property. Following the Civil War he served for a short time on the Court of Arbitration for West Tennessee, a provisional court helping the regular Tennessee Supreme Court dispose of a backlog of cases caused by the war. He also made an unsuccessful bid for a seat on the state supreme court.

A Whig before the war, Jackson was elected to the Tennessee state legislature as a Democrat



Howell E. Jackson.
PHOTOGRAPH BY LANDY CINCINNATI. COLLECTION OF THE SUPREME COURT OF THE UNITED STATES



in 1880. The following year the legislature assembled to choose a U.S. senator on a joint ballot. No candidate, including the incumbent, could muster enough votes in the divided assembly. After a number of deadlocked days, a Republican legislator cast his vote for Jackson, who had not been a candidate, and Jackson was quickly elected. In the Senate he gained a reputation as a tireless worker. He was nonpartisan in his friendships, becoming close with Democrat president Grover Cleveland and Republican Senate colleague BENJAMIN HARRISON.

Jackson resigned from the Senate in 1886 when President Cleveland appointed him to the Sixth Circuit Court of Appeals, and eventually became that court's presiding judge. In 1893 lame-duck president Harrison appointed Jackson to fill a vacancy on the U.S. Supreme Court. Harrison appointed Jackson in part because Cleveland was about to become president, and Harrison doubted that any Republican could garner confirmation by the Democratic Senate. Harrison, a former Union general, saw in Jackson, a former member of the Confederate government, not another secessionist southern Democrat but a man committed to serving his entire nation.

[THE POLLOCK] DECISION DISREGARDS THE WELL-ESTABLISHED CANON... THAT AN ACT PASSED BY A CO-ORDINATE BRANCH OF THE GOVERNMENT HAS EVERY PRESUMPTION IN ITS FAVOR, AND SHOULD NEVER BE DECLARED INVALID BY THE COURTS UNLESS ITS REPUGNANCY TO THE CONSTITUTION IS CLEAR BEYOND ALL REASONABLE DOUBT. —HOWELL JACKSON

In August 1894 Congress imposed a nationwide two percent income tax on all annual incomes in excess of $4,000. The new law, popular in the South and West but despised in the North and East, was quickly challenged as being unconstitutional. Soon, the Supreme Court agreed to hear the case.

Tuberculosis struck Jackson, and shortly after the October 1894 session began his deteriorating health kept him off the bench. He was absent in April 1895 when the Court held in *Pollock* that part of the new tax law was unconstitutional. The Court was evenly divided on whether the entire law must be declared unconstitutional, and therefore did not express an opinion on the matter. The absence of a firm decision by the justices meant that the courts could expect a flood of litigation from unwilling taxpayers. The Supreme Court quickly granted a rehearing to reexamine the issue.

To break the deadlock, it appeared essential that Justice Jackson either resign so that a new justice could be appointed, or agree to hear the case. Jackson decided to hear the case. At Chief Justice Melville W. Fuller's insistence, he obtained his doctor's permission to travel from Tennessee, where he had been recuperating, to Washington, D.C., to return to the bench.

The case was argued for three days in early May, 1895. Strong passions about the income tax law, widespread speculation about how Jackson would vote, and the drama of the obviously ailing justice made the case one of keen PUBLIC INTEREST. Reporters speculated that the effort of participating in the hearing might well shorten Jackson's life.

The decision was rendered less than two weeks after oral arguments. Ironically, Jackson's vote was not crucial, because one of his colleagues changed his opinion. Jackson and three other justices voted to uphold the constitutionality of the tax; five justices, including the colleague who had changed his opinion, voted to declare the entire law void. Jackson, too weak to prepare a formal, written opinion, spoke from notes as he announced his dissent in the Supreme Court chamber. Jackson declared that the decision was "the most disastrous blow ever struck at the constitutional power of Congress." An income tax was not resurrected until passage of the SIXTEENTH AMENDMENT in 1913.

After the rehearing in *Pollock,* Jackson returned to his home in West Meade, Tennessee. He died less than three months later, on August 8, 1895.

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v JACKSON, JESSE LOUIS, SR.

Reverend Jesse Louis Jackson Sr. is a CIVIL RIGHTS activist, clergyman, and prominent African American leader in the United States.

Jackson was born October 8, 1941, in Greenville, South Carolina. His mother, Helen Burns, was only 16 when Jackson was born. His father, Noah Louis Robinson, acknowledged Jackson as his son, but because he was married

to another woman and had several other children, he was not involved in Jackson's life. When he was three, his mother married Charles Jackson. The family eventually moved out of the poor section of town to a new housing project, where, for the first time, they enjoyed hot and cold running water and an indoor bathroom. Jackson was legally adopted by his stepfather when he was 12. He has one brother, Charles Jackson Jr.

Jackson attended the all-black Sterling High School, in Greenville, where he was a star football player. After graduation in 1959, he went north to the University of Illinois on a football scholarship. The following year he transferred to North Carolina Agricultural and Technical College (North Carolina A&T), a mostly black school in Greensboro. There he met his wife, Jacqueline Lavinia Brown, a fellow student who had also grown up in poverty. The couple married December 31, 1962, and have five children: Santita, Jesse Louis Jr. (Democratic representative, second congressional district of Illinois), Jonathan Luther, Yusef DuBois, and Jacqueline Lavinia.

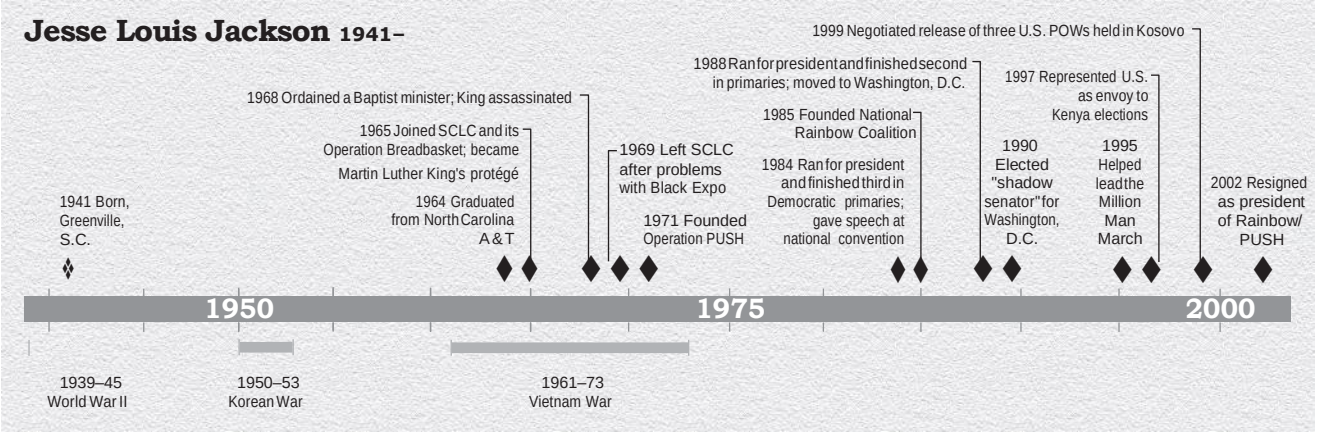
While at North Carolina A&T, Jackson began the work that would make him a widely recognized civil rights leader. He led a series of protest demonstrations and sit-ins throughout the South and joined one of the first organized groups in the CIVIL RIGHTS MOVEMENT, the Congress of Racial Equality (CORE).

After graduating from college in the fall of 1964, Jackson left the fledgling civil rights movement and moved north again, to attend Chicago Theological Seminary. He immersed himself in his studies, determined to learn how he could bring about change through the ministry.

Jesse Jackson.
AP IMAGES

Then in 1965, the civil rights movement began to gain momentum, and Jackson wanted to be a part of it. He joined the SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE (SCLC) of MARTIN LUTHER KING Jr, and expanded its Operation Breadbasket, an economic campaign that used boycotts and negotiations to secure jobs for minorities. Six months before he was to graduate from the seminary, he left to work full-time for the SCLC. Nevertheless, he was ordained a Baptist minister in 1968.

Jackson saw King as his mentor and role model, and he became King's protégé. He worked closely with King and the other SCLC



leaders and was with King when King was assassinated on April 4, 1968.

In 1969 Jackson organized the first Black Expo, a promotional festival for the companies involved in Operation Breadbasket. The expo was intended to be an annual fundraiser for the SCLC, but Jackson had quietly incorporated the event independently. SCLC officials were enraged, and Jackson finally left the organization.

In the early 1970s Jackson formed Operation People United to Serve Humanity (Operation PUSH), with the goal of economic empowerment for the "disadvantaged and people of color." He negotiated with such large corporations as the Coca-Cola Company, Heublein, and Ford Motor Company to increase minority employment and minority-owned dealerships and franchises. He also began holding rallies at high schools to raise the self-image of African American students. He stressed the importance of education, personal responsibility, and hard work to achieve one's goals. Jackson's work with teenagers attracted the attention of President JIMMY CARTER, whose administration rewarded Jackson with grants and contracts to continue his outreach. He named his school ministry PUSH for Excellence, or PUSH-Excel.

AMERICA IS...LIKE A QUILT—MANY PATCHES, MANY PIECES, MANY COLORS, MANY SIZES, ALL WOVEN AND HELD TOGETHER BY A COMMON THREAD.
—JESSE JACKSON

During the late 1970s and early 1980s, Jackson emerged as a preeminent African American leader in the United States. He decided to make a bid for the presidency. He mounted an ambitious voter registration drive throughout the South, and barnstormed through Western Europe enlisting support among U.S. service personnel. In an effort to enhance his image and prove that his expertise extended beyond domestic matters, Jackson traveled to trouble spots such as the Middle East, Latin America, and Cuba to meet with leaders there. In 1983 he negotiated the release of Lieutenant Robert O. Goodman Jr., a U.S. citizen whose jet had been shot down over Syrian-held territory in Lebanon.

Critics dismissed these activities as opportunistic grandstanding. Particularly troubling to some was Jackson's perceived anti-Semitic bias. During a private conversation in 1984, Jackson referred to Jews as Hymies and to New York as Hymietown. He later apologized. A short time later, Louis Farrakhan, head of the controversial NATION OF ISLAM and a Jackson supporter, threatened the reporter who had written about Jackson's remarks. Jackson later distanced himself from Farrakhan and his organization because of their perceived militant anti-white and anti-Semitic stance.

Jackson placed third in the 1984 presidential primaries, behind former VICE PRESIDENT Walter F. Mondale and Colorado senator Gary W. Hart. His delegate votes did not give him the clout he needed to compel the Democrats to accept his controversial platform proposals. Jackson gracefully conceded the nomination to Mondale and gave a rousing speech at the Democratic National Convention in San Francisco, which was in part a response to his critics:

> If in my low moments, in word, deed, or attitude, through some error of temper, taste, or tone, I have caused anyone discomfort, created pain, or revived someone's fears, that was not my truest self.... I am not a perfect servant. I am a public servant doing my best against the odds. As I develop and serve, be patient. God is not finished with me yet.

After the convention, Jackson resumed his duties as head of Operation PUSH. He also continued to be active in progressive causes, leading what he called a counterinaugural march and prayer vigil in January 1985, and participating in a reenactment of the civil rights march from Selma, Alabama, to Montgomery, Alabama, in March 1985. That same year, Jackson formed the National Rainbow Coalition, his vision of a modern populist movement comprising African Americans, working families, liberal urbanites, Hispanics, women's rights groups, college faculty and students, environmentalists, farmers, and labor unions—a cultural as well as racial alliance searching for alternatives within the DEMOCRATIC PARTY.

Jackson made another run for president in 1988 and finished second behind Michael Dukakis in the primaries. However, much to his disappointment, he was not chosen as the vice presidential nominee.

After the 1988 election, Jackson moved from Chicago to Washington, D.C., and was elected one of the city's "shadow senators." In this unpaid, nonvoting position, which was created by the Washington City Council, Jackson represents the district's interests on Capitol Hill. His main responsibility is to lobby Congress for statehood for the nation's capital.

In the 1990s and into the 2000s Jackson continued to be the leading spokesman for civil rights issues on both the domestic and international fronts. He called on the African American

community to take action against the violence that was claiming so many of its young people. He advocated for such issues as universal health care and equal administration of justice in all U.S. cities. And in 1996, in an effort to maximize efforts, the Rainbow Coalition and Operation PUSH merged to form Rainbow/PUSH Coalition, which remains devoted to education, PUBLIC POLICY changes, and social and economic empowerment.

In 1997 President BILL CLINTON and Secretary of State MADELEINE ALBRIGHT named Jackson as Special Envoy for the President and Secretary of State for the Promotion of Democracy in Africa. He has met with many of the leaders of African nations in support of this directive. He also has served as an international diplomat on a number of other occasions, and in 1999, negotiated the release of U.S. soldiers held in Kosovo. In 2000, President Clinton awarded Jackson the highest civilian honor, the Presidential Medal of Freedom, for his national and international civil rights efforts. That same year, Jackson received his master of divinity degree from the Chicago Theological Seminary on June 3. He had been only three courses short of earning his degree when he left the school to work with a minister more than three decades ago.

Jackson disappointed many of his followers when it came to light in 2001 that he had had an extramarital affair that resulted in the birth of a daughter, who was 20 months old at the time of his announcement. "I fully accept responsibility, and I am truly sorry for my actions," he said in a written statement.

In July 2002 Jackson, without specifying a timetable for his intention of stepping down, announced that his successor as president of the Rainbow/PUSH Coalition would be the Rev. James Meeks. Jackson said that he wanted to have a successor in place so that the organization would not be traumatized by his retirement. But this announcement did not mean that Jackson was slowing down. Over the next two years he worked to defeat the recall of California Governor Gray Davis, to support the election of Democratic presidential candidate John Kerry, to defeat a ballot measure that would have banned the California government from collecting data about people's race in most circumstances, to support striking Yale University service and clerical workers, and to stop a Texas redistricting plan that would have been favorable to Republicans. He was even arrested for his part in the protests at Yale.

Jackson is often involved in issues dealing with civil rights and political activism. In March 2005 Jackson met with Florida Governor Jeb Bush and the state's Senate President, Tom Lee, to discuss the case of brain-damaged Terri Schiavo. He was in favor of her parent's wishes. In June 2007 he and other demonstrators were arrested for blocking the entrance to a gun shop in Riverdale, Illinois.

A tireless activist, Jackson maintains a whirlwind schedule, traveling to schools and universities for speaking engagements, appearing on news programs, and writing a weekly syndicated column that provides political analysis. He has received numerous awards and commendations throughout his career, including the NAACP's Spingarn Medal. He also has been the recipient of more than 40 honorary degrees.

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v JACKSON, ROBERT HOUGHWOUT

Robert Houghwout Jackson served as general counsel for the Federal Bureau of Internal Revenue, attorney general of the United States, and justice of the U.S. Supreme Court. During his service on the Court from 1941 to 1954 Jackson delivered unconventional opinions that did not always coincide with those of the president who had appointed him, FRANKLIN D. ROOSEVELT. Jackson was nonetheless chosen to be chief counsel at the NUREMBERG TRIALS following WORLD WAR II.

Jackson's straightforward style as a lawyer and a justice stemmed from his rural upbringing. The first Jacksons immigrated to the United States from England in 1819. They settled in Spring Creek, Pennsylvania, where Jackson was born on February 13, 1892. His father, William Eldred Jackson, provided for the family through farming and lumbering.

In September 1911 Jackson entered Albany Law School, passing the bar in 1913. He then began a lengthy career with the establishment of a law practice at Jamestown, New York, and formed a friendship with fellow New Yorker Roosevelt.

IT IS NOT THE FUNCTION OF OUR GOVERNMENT TO KEEP THE CITIZEN FROM FALLING INTO ERROR; IT IS THE FUNCTION OF THE CITIZEN TO KEEP THE GOVERNMENT FROM FALLING INTO ERROR.
—ROBERT JACKSON

Robert H. Jackson. PHOTOGRAPH BY HARRIS & EWING. COLLECTION OF THE SUPREME COURT OF THE UNITED STATES

In 1934 Jackson was selected by the recently elected president Roosevelt to serve as general counsel for the Federal Bureau of Internal Revenue. In 1936 he became assistant attorney general of the United States, a position he held until 1938. Between 1938 and 1939, he performed the duties of U.S. SOLICITOR GENERAL. He acted as the U.S. attorney general from 1940 until his appointment in July 1941 as justice of the U.S. Supreme Court.

Jackson earned the trust and admiration of his associates through his wit and wisdom. Many of his philosophies on essential constitutional issues came to be known as Jacksonisms. Throughout his career he withheld blind praise of the U.S. system of government. He stated, "A free man must be a reasoning man, and he must dare to doubt what a legislative or electoral majority may most passionately assert" (*American Communications Ass'n v. Douds*, 339 U.S. 382 70 S. Ct. 674, 94 L. Ed. 925 [1950]).

Jackson voted against government actions that imposed upon free speech and RELIGION, and voiced mistrust of labor unions. Many of his opinions were dissents from a majority that tended to uphold union interests and to support NEW DEAL legislation.

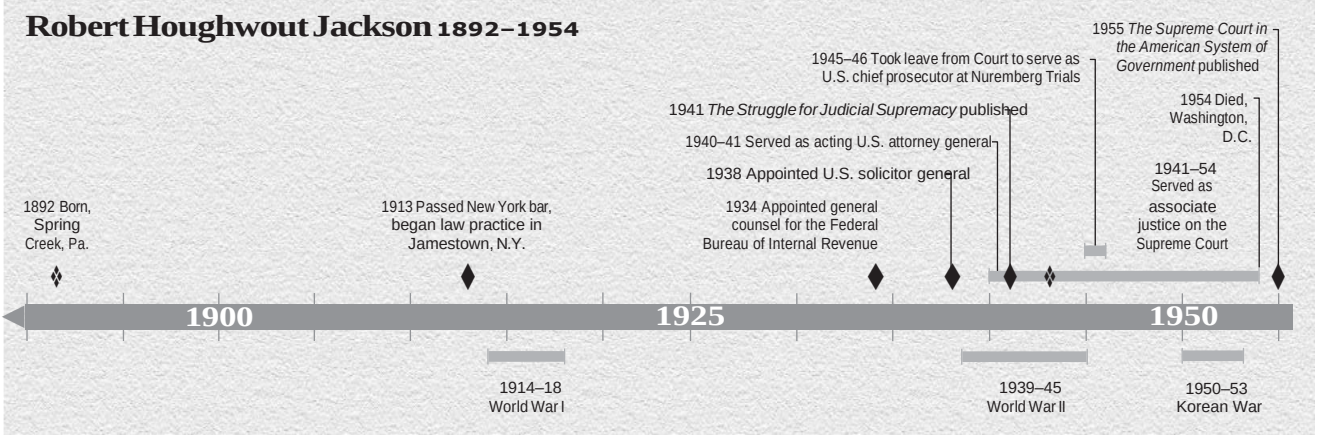
Following the end of the WORLD WAR II, Jackson was chosen as chief counsel for the United States at the Nuremberg trials, where Nazi leaders were tried for WAR CRIMES. Included among the defendants was Hermann Goring, second in command of the Nazi regime, and Adolf Hitler's designated successor.

In his opening remarks before Goring's trial began, Jackson noted the place of the proceddings in history when he said:

> We must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our own lips as well. We must summon such detachment and intellectual integrity to our task that this trial will commend itself to posterity as fulfilling humanity's aspirations to do justice.

On September 30 and October 1, 1946, the Nuremberg tribunal found nineteen of the twenty-two defendants guilty on one or more counts. Twelve defendants, including Goring, were sentenced to death by hanging.

For his success at Nuremberg, Jackson received a number of honors in the United States, including honorary doctoral degrees



from Dartmouth College and Syracuse University. Recognition also came from other nations, including honorary degrees in law from the University of Brussels and the University of Warsaw.

After the trials, Jackson continued his service on the Court. He died on October 9, 1954.

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JACTITATION

Deceitful boasting, a deceptive claim, or a continuing assertion prejudicial to the right of another.

One form of jactitation at COMMON LAW is slander of title—defaming another person's title to real property. Some jurisdictions provide a remedy when the injured party brings an action for jactitation.

JAIL

A building designated or regularly used for the confinement of individuals who are sentenced for minor crimes or who are unable to gain release on bail and are in custody awaiting trial.

Jail is usually the first place a person is taken after being arrested by police officers. Most cities have at least one jail, and persons are taken directly there after they are arrested; in less populated areas, arrestees may be taken first to a police station and later to the nearest jail. Many jails are also used for the short-term INCARCERATION of persons convicted of minor crimes.

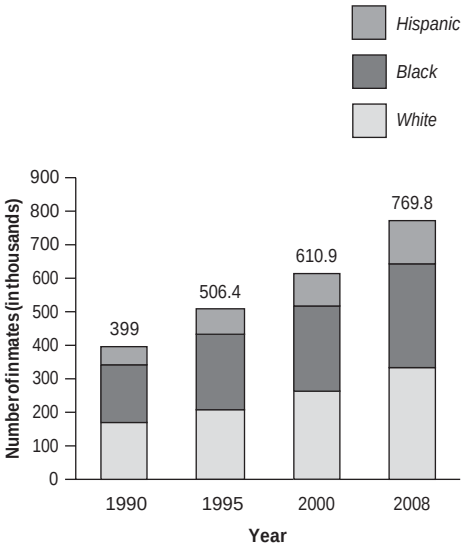
A person in jail usually has little choice in being there. Those awaiting trial (pretrial detainees) have been forcibly confined by law enforcement officers, and those serving a sentence (convicts) have been ordered there by the court. A sentence of confinement to jail is backed by the power of law enforcement personnel. Flight from prosecution or confinement is a FELONY that usually results in a prison sentence.

Jails exist on the federal, state, and local levels. The authority of states to build, operate, and fill jails can be found in the TENTH AMENDMENT, which has been construed to grant to states the power to pass their own laws to preserve the safety, health, and welfare of their communities. On the federal level, the authority to build and fill jails is inherent in the GENERAL WELFARE Clause, the NECESSARY AND PROPER CLAUSE, and various clauses authorizing federal punishment in Article I, Section 8, of the U.S. Constitution.

The money to build, maintain, and operate jails is usually provided by taxpayers. In the 1990s private business leaders began to push for the opportunity to construct and operate jails and prisons. These entrepreneurs claimed that their companies could do the job more efficiently than the government, and make a profit at the same time. Critics argued that the private operation of jails and prisons violates the Thirteenth Amendment's prohibition of SLAVERY and is an ABROGATION of governmental responsibility, but many state and local lawmakers have approved these endeavors.

Though they are similar, jails are not the same as prisons. Prisons are large facilities that hold large numbers of people for long terms; jails are usually smaller and hold smaller numbers of people for short terms. Prisons confine only convicted criminals; jails can hold convicted criminals, but usually only for short periods. Many jails are used for the sole purpose

Number of Jail Inmates, by Race, from 1990 to 2008



SOURCE: U.S. Department of Justice, Bureau of Justice Statistics.

of detaining defendants awaiting trial. In jurisdictions with these jails, a subsequent sentence of short-term incarceration is served at a different facility, such as a work farm or workhouse.

Persons sentenced to a workhouse may be forced to work, but pretrial detainees are not. Convicts in prison are usually required to work if they are able. Some convicts sentenced to jail are able to come and go, serving their term on weekends or other designated days. Pretrial detainees in jail may leave if they can make BAIL. Inmates in prison are rarely allowed to leave until their prison sentence has been completed or they are granted early release on PAROLE.

Jails and prisons are both dangerous. Both house persons accused or convicted of crimes, making anger, humiliation, and violence regular features of life on the inside. Violent gangs are not as prevalent in jail as in prison, because the incarceration periods are shorter and inmates are less able to organize. However, jail inmates do not have the incentive from "good-time" credits that prison inmates have. A good-time credit reduces the sentence of a prison inmate for GOOD BEHAVIOR. Transgressions in prison can result in the loss of these credits.

Not all the risks facing incarcerated persons are physical. Fellow inmates may give prosecutors information on crimes in exchange for leniency in sentencing or an early release, and prosecutors often place undercover agents in jail or prison to obtain information from inmates. Unwitting inmates often regret cultivating new friendships with these persons.

In *Illinois v. Perkins*, 496 U.S. 292, 110 S. Ct. 2394, 110 L. Ed. 2d 243 (1990), Lloyd Perkins, while detained on MURDER charges, told a fellow inmate of his involvement in a different murder. The fellow inmate was undercover agent John Parisi. Perkins was prosecuted and found guilty of the other murder. He appealed, arguing that he was entitled to *Miranda* warnings before being questioned by law enforcement personnel, and that his statements to Parisi should have been excluded from trial. The U.S. Supreme Court rejected the argument, ruling in part that employing an undercover agent in an incarceration setting does not make a confession involuntary.

Though jail terms are usually shorter than prison terms, they are not always. Many states limit jail terms to one year, but some allow jail sentences to reach more than two years. In Massachusetts, for example, a person can be sentenced to confinement in a jail or house of correction for as long as two-and-a-half years (Mass. Gen. Laws Ann. ch. 279, § 23). In large, complex cases and in cases of retrial, pretrial DETENTION can last months, sometimes years.

Though they are presumed innocent in a court of law, pretrial detainees can claim few rights beyond those of convicted defendants. The U.S. Supreme Court does not find a reason for distinguishing between pretrial detainees and convicted defendants in jail. In fact, the High Court has stated that security measures in the federal system should be no different than those for convicted criminals because only the most dangerous defendants are held before trial.

Nevertheless, pretrial detainees do possess the same rights as convicted criminals. These include the rights to FREEDOM OF SPEECH and RELIGION, to freedom from discrimination based on race, and to DUE PROCESS OF LAW before additional deprivation of life, liberty, or property. Detainees and inmates also have the rights to sanitary conditions; to freedom from constant, loud noise; to nutritious food; to reading materials; and to freedom from constant

physical restraint. All these rights may, however, be infringed by jail and prison officials to the extent that they threaten security in the facility.

The landmark case of *Bell v. Wolfish,* 441 U.S. 520, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979), describes the conditions and treatment that pretrial detainees can expect in jail. In *Bell,* pretrial detainees at the federal Metropolitan Correctional Center (MCC), in New York City, challenged an array of prison practices, including double-bunking (housing two inmates in the space intended for one inmate); the prohibition of hardcover books not mailed directly from publishers, book clubs, or bookstores; the prohibition of food and personal items from outside the jail; body cavity searches of pretrial detainees following visits with persons from outside the jail; and the requirement that pretrial detainees remain outside their cell while MCC officials conduct routine searches.

The primary issue in *Bell* was whether any of the practices amounted to punishment of the detainee. The standard for determining this was whether the measures were reasonably related to a legitimate, nonpunitive government objective, such as security. The Supreme Court determined that because the practices were related to security, none constituted a violation of the constitutional rights of the pretrial detainees. According to the Court, "There must be a 'mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application.'" (quoting *Wolff v. McDonnell,* 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 [1974]).

In 1984, the High Court revisited *Bell* in *Block v. Rutherford,* 468 U.S. 576, 104 S. Ct. 3227, 82 L. Ed. 2d 438 (1984). The Court held that random searches of cells in the absence of the detainee, random double-bunking, and the prohibition of physical contact between detainees and outside visitors were all constitutionally permissible.

In 1984, Congress took action to curb the release of pretrial detainees in the federal system, with the Bail Reform Act of 1984 (18 U.S.C.A. § 3141 et seq.). This act requires a judge to find that a DEFENDANT is not a danger to the community before determining a bail amount or granting bail at all. The act identifies a wide range of criminal activities by defendants as dangerous to the community, and creates a presumption in favor of PREVENTIVE DETENTION for certain alleged acts. In general, the act makes it more difficult for many accused criminals to remain free pending trial.

Generally, the matter of assigning bail and determining the conditions of pretrial release is left to the discretion of the judge presiding over the case. However, many states followed the lead of Congress by passing laws that restrict the conditions under which a judge may grant pretrial release from jail. These laws, combined with an increase in arrest and incarceration rates, have created cramped conditions in jails.

To alleviate overcrowding, many states turned to alternative forms of sentencing. Alternative forms of sentencing, however, lead to legal problems. For example, when a defendant is sentenced to a form of imprisonment outside the traditional jail and prison settings, does his sentence constitute incarceration or official detention? This question is significant because if a defendant violates the terms of the incarceration or subsequent PROBATION and is resentenced to prison or jail, the defendant may want credit for the time served in the alternative setting.

In *Michigan v. Hite,* 200 Mich. App. 1, 503 N.W.2d 692 (1993), Marvin Hite was convicted of receiving and concealing stolen property and was sentenced to a boot camp program at Camp Sauble, in Freesoil, Michigan. The boot camp imposed intensive regimentation, strict discipline, strenuous physical labor, and grueling physical activities. The four separate buildings of the camp were enclosed by an 18-foot-high fence topped with barbed wire. Hite was also sentenced to a term of probation.

Hite successfully completed the boot camp, but violated the terms of his probation. For that violation, the court resentenced him to serve two to five years' imprisonment. The court also denied credit for the time Hite served in the boot camp. Hite appealed the denial of credit, arguing that it violated the DOUBLE JEOPARDY Clause of the FIFTH AMENDMENT to the U.S. Constitution.

The Court of Appeals of Michigan agreed with Hite and reversed the decision. According to the court, although the boot camp did not have cells with bars, "the discipline, regimentation, and deprivation of liberties" at the camp were greater than those at any minimum-security prison in Michigan. The court ruled that the boot camp constituted incarceration,

and Hite's sentence was decreased by the amount of time he had already served at the camp.

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JAILHOUSE LAWYER

Jailhouse lawyer is a term applied to prison inmates with some knowledge of law who give legal advice and assistance to their fellow inmates.

The important role that jailhouse lawyers play in the criminal justice system has been recognized by the U.S. Supreme Court, which has held that jailhouse lawyers must be permitted to assist illiterate inmates in filing petitions for post-conviction relief unless the state provides some reasonable alternative (*Johnson v. Avery,* 393 U.S. 483, 89 S. Ct. 747, 21 L. Ed. 2d 718 [1969]).

However, the U.S. Supreme Court also has recognized that prison authorities may restrict the activities of prisoners who provide more formalized legal advice. For example, in *Shaw v. Murphy* (532 U.S. 223, 121 S. Ct. 1475, 149 L. Ed. 2d 420 [2001]), the Court held that prisoners do not possess a FIRST AMENDMENT right to provide legal advice to other prisoners. In so ruling, the Court permitted prison officials to discipline inmates who do not have authority to assist other inmates with their legal problems. Kevin Murphy was one of a number of inmates who were designated *inmate law clerks* by Montana prison authorities. Administrators directed certain inmates to Murphy, who would consult with them on their legal problems and assist them with filling out paper work. Montana authorities maintained control over the clerks by preventing them from consulting with inmates without prior approval. Murphy was disciplined for involving himself in an inmate's case without permission, and he took the issue to court. The U.S. Supreme Court unanimously held that prison authorities had reasonable administrative grounds for restricting legal communications and for disciplining Murphy.

One notable example of a jailhouse lawyer is Michael Ray, a South Carolina inmate who served as a prison law clerk. In and out of prison most of his life for fraud schemes, Ray did become a paralegal while he was free. Inside prison, he drew up motions and petitions for prisoners. One prisoner, Keith Burgess, enlisted Ray's help in 2007. Burgess sought to overturn his sentence for drug possession, which had been lengthened because he had previously committed a MISDEMEANOR drug offense. He contended that his prior conviction needed to be a FELONY to qualify for an enhanced sentence.

Ray drafted a petition for WRIT of CERTIORARI on Burgess's behalf and submitted it to the Supreme Court. Though the Court typically agrees to hear less than 1 percent of the thousands of cases filed each year, the Court granted certiorari to review Burgess's case. This made Ray something of a celebrity, even though he did not argue the case before the Court, nor was he released to see the argument in person. Stanford law professor Jeffrey L. Fisher instead argued the case before the Court. In 2008, the Court upheld Burgess's sentencing, finding that any offense that was punishable by more than one year's imprisonment could be treated as a felony.

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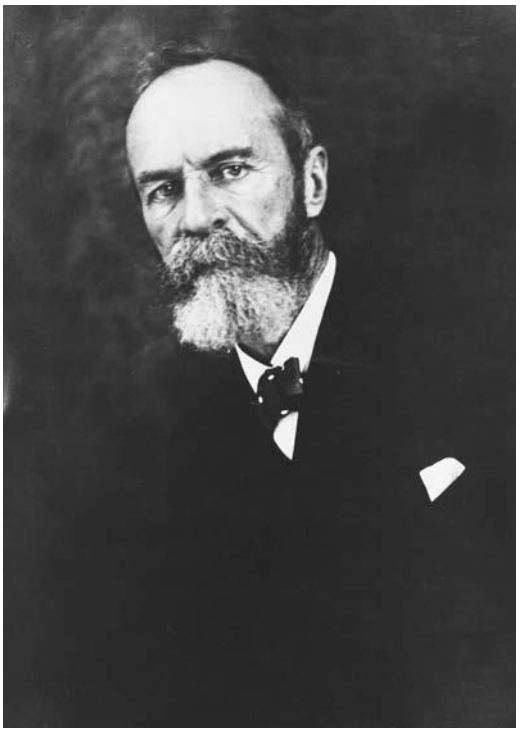
v JAMES, WILLIAM

William James was a popular and influential philosopher whose writings and theories influenced various areas of U.S. life, including the movement known as LEGAL REALISM.

James was born in New York City on January 11, 1842, to Henry James Sr. and Mary Walsh James. Comfortably supported by an inheritance, his parents stressed their children's abilities to make independent choices. James's formal schooling was irregular, and he studied frequently in England, France, Switzerland, and Germany. James pursued an enduring interest in the natural sciences, earning a medical degree from Harvard University in 1869, though he never intended to practice medicine. He joined Harvard's faculty in 1872, teaching anatomy and physiology. He was also interested in psychology and philosophy, seeing these as related fields through his grounding in scientific studies. He began teaching those disciplines at Harvard in 1875 and 1879, respectively. He retired from the Harvard faculty in 1907.

In his first major work, *Principles in Psychology* (1890), James began to articulate a philosophy based on free will and personal experience. In a theory popularized as stream of consciousness, James argued that each person's thought is independent and personal, with the mind free to choose between any number of options. The subjective choices each individual makes are determined by the interconnected string of prior experiences in that person's life. In James's thought, choice and belief are always contingent, with no possibility for some permanent, definitive structure based outside of personal experience.



William James.
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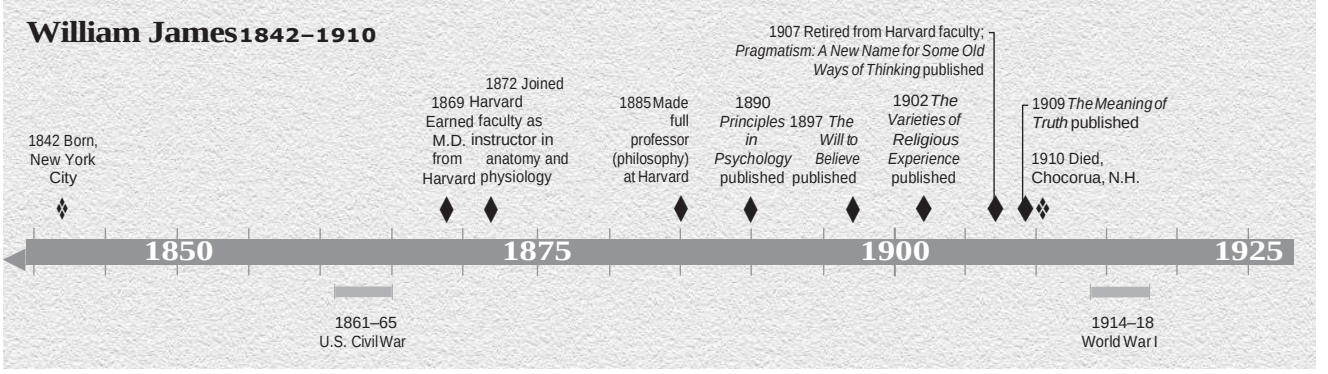
James's *Pragmatism: A New Name for Some Old Ways of Thinking* (1907) developed further his idea that knowledge, meaning, and truth are essentially the result of each person's understanding of the experiences in her or his life. Mere formalism has no absolute authority; personal experience forms the framework of belief and action for each individual.

These important elements provided the basis for the movement known as legal realism. James's rejection of immutable truths in favor

ALL THE HIGHER, MORE PENETRATING IDEALS ARE REVOLUTIONARY. THEY PRESENT THEMSELVES FAR LESS IN THE GUISE OF EFFECTS OF PAST EXPERIENCE THAN IN THAT OF PROBABLE CAUSES OF FUTURE EXPERIENCE.
—WILLIAM JAMES



of experience as the mode to interpret reality was picked up by ROSCOE POUND, OLIVER WENDELL HOLMES JR., and others in the 1920s and 1930s as a challenge to the prevailing belief that legal principles are based on an absolute structure of truth. Legal realists connected law with social and economic realities, both as legislated and as ruled on by courts. They argued that law is a tool for achieving social and policy goals, rather than the implementation of absolute truth, whether or not it is consciously treated that way. James's empiricism, based on experience as the root of human action, had a COROLLARY within legal realism's use of social science as an analytical tool within law.

Though legal realism as a movement was considered to be played out by the 1940s, the belief that varied forces influence the actors and changes within the legal system has become more standard than the view that legal principles are immutable truths. James provided the philosophical underpinning for this shift in thinking.

James died on August 26, 1910, in Chocorua, New Hampshire.

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CROSS REFERENCE

Jurisprudence.

JAPANESE AMERICAN EVACUATION CASES

In the midst of WORLD WAR II (WWII), from 1942 to 1944, the U.S. Army evacuated Japanese Americans living on the West Coast from their homes and transferred them to makeshift DETENTION camps. The army insisted that it was a "military necessity" to evacuate both citizens and noncitizens of Japanese ancestry, and its actions were supported by President FRANKLIN D. ROOSEVELT and the U.S. Congress. Those who were evacuated suffered tremendous losses, being forced to sell their homes and belongings on very short notice and to live in crowded and unsanitary conditions. A few Japanese Americans challenged the constitutionality of the evacuation orders, but the Supreme Court at first ruled against them. In the years since the end of WWII, the U.S. government has acknowledged the injustice suffered by the Japanese American evacuees, and it has made several efforts to redress their losses.

History

After Japan bombed Pearl Harbor on December 7, 1941, persons of Japanese descent living in the western United States became a target for widespread suspicion, fear, and hostility. Several forces contributed to this sense of anger and paranoia. First, the devastating success of the Pearl Harbor attack led many to question how the U.S. military could have been caught so unprepared. A report commissioned by President Roosevelt directly blamed the U.S. Army and Navy commanders in Hawaii for their lack of preparedness, but it also claimed that a Japanese ESPIONAGE network in Hawaii had sent "information to the Japanese Empire respecting the military and naval establishments" on the island. This espionage ring, the report asserted, included both Japanese consular officials and "persons having no open relations with the Japanese foreign service" (88 *Cong. Rec.* pt. 8, at A261). This accusation against Japanese Hawaiians, though never proved, inflamed the mainland press and contributed to what quickly became an intense campaign to evacuate Japanese Americans from the West Coast.

A second cause for the hostility directed at Japanese Americans was the widespread belief after Pearl Harbor that Japan would soon try to invade the West Coast of the United States. Much of the Pacific fleet had been destroyed by the Pearl Harbor attack, and the Japanese had gone on to achieve a series of military victories in the Pacific. A West Coast invasion seemed imminent to many, and statements by government officials and newspaper editors stoked fears about the loyalty of Japanese Americans and their possible involvement in espionage activities. On January 28, 1942, for example, an

editorial in the *Los Angeles Times* argued that "the rigors of war demand proper detention of Japanese and their immediate removal from the most acute danger spots" on the West Coast. Syndicated columnist Henry McLemore was less restrained in his assessment, which appeared in the *San Francisco Examiner* on January 29: "I am for immediate removal of every Japanese ... to a point deep in the interior. I don't mean a nice part of the interior either ... Let 'em be pinched, hurt, hungry and dead up against it.... Personally I hate the Japanese."

On February 14, 1942, Lieutenant General John L. De Witt, commanding general of the Western Defense Command, issued a final recommendation to the secretary of war arguing that it was a military necessity to evacuate "Japanese and other subversive persons from the Pacific Coast." The recommendation contained a brief analysis of the situation, which read, in part:

> In the war which we are now engaged, racial affinities are not severed by migration. The Japanese race is an enemy race and while many second and third generation Japanese born on United States soil, possessed of United States citizenship, have become "Americanized," the racial strains are undiluted.... It, therefore, follows that along the vital Pacific Coast over 112,000 potential enemies of Japanese extraction are at large today. There are indications that the very fact that no SABOTAGE has taken place to date is a disturbing and confirming indication that such action will be taken (War Department 1942, 34).

Many other leading politicians and government officials shared De Witt's views. The California congressional delegation, for example, wrote to President Roosevelt urging the removal of the entire Japanese population from the coastal states. California state attorney general EARL WARREN, who would later become governor of California and chief justice of the Supreme Court, strongly advocated the evacuation of the Japanese, arguing before a congressional committee that to believe that the lack of sabotage activity among Japanese Americans proved their loyalty was foolish.

De Witt's report, combined with pressure from other military leaders and political groups, led President Roosevelt on February 19, 1942, to sign EXECUTIVE ORDER No. 9066, which gave the War Department the authority to designate military zones "from which any or all persons may be excluded." Despite warnings from the U.S. attorney general, FRANCIS BIDDLE, that the forced removal of U.S. citizens was unconstitutional, Roosevelt signed 9066 with the clear intent of removing both citizens and noncitizens of Japanese descent. The order theoretically also affected German and Italian nationals, who greatly outnumbered Japanese people living in the designated areas. However, Germans and Italians who were considered suspect were given individual hearings and were interned. The Japanese, in contrast, were treated not as individuals but as the "enemy race" that De Witt had labeled them in his evacuation recommendation. Congress hurriedly sanctioned the president's order when, with little debate and a unanimous voice vote, it passed PUBLIC LAW No. 503, which incorporated the procedures of 9066, criminalizing the violations of military orders, such as the curfews and evacuation directives outlined in the order.

The signing of 9066 and its passage into law immediately set in motion the steps leading to the removal of Japanese Americans on the West Coast from their homes and communities. On February 25 General De Witt ordered the eviction of the 2,000 Japanese living on Terminal Island, in Los Angeles, giving them 24 hours to sell their homes and businesses. On March 2 De Witt issued Military Proclamation No. 1, which declared the western half of California, Oregon, and Washington to be military zones with specific zones of exclusion. This order allowed Japanese living there to "voluntarily evacuate" the area. Because the Japanese knew

This 1943 photograph by Ansel Adams shows the Manzanar Relocation Center located near Independence, California. The camp was one of ten centers to which Japanese American citizens and Japanese resident aliens were held during World War II.
LIBRARY OF CONGRESS

they were not welcome in other parts of the country and because those who had tried to resettle had frequently been the targets of violence, the majority remained where they were.

On March 24 De Witt issued Military Order No. 3, which established a nighttime CURFEW and a five-mile travel restriction to be imposed only on persons of Japanese ancestry. On the same day, the first civilian exclusion order was issued on Bainbridge Island, in Washington, ordering the Japanese Americans there to leave the island within 24 hours. The Japanese began to sense that they would all soon be evicted from the entire West Coast, but because they were subject to the five-mile travel restriction, they were unable to leave the military zones and attempt to resettle elsewhere.

By early April 1942, orders began to be posted in Japanese communities directing all persons of Japanese ancestry, both citizens and resident aliens, to report to assembly points. With only a matter of days to prepare for removal, the Japanese were forced to sell their homes, cars, and other possessions, at tremendous losses, to neighbors and others who were eager to take advantage of the situation.

By the beginning of June 1942, all Japanese Americans living in California, Oregon, and Washington had been evacuated and transported by train or bus to detention camps, which were officially labeled assembly centers. More than 112,000 Japanese Americans were evacuated and detained, approximately 70,000 of them U.S. citizens. Because the detention camps had been hastily arranged, they were largely made up of crude shacks and converted livestock stables located in hot and dry desert areas. Privacy was nonexistent; families were separated by only thin partitions, and toilets had no partitions at all. These bleak, crowded, and unsanitary conditions, combined with inadequate food, led to widespread sickness and a disintegration of family order and unity.

Internees were forced to remain in the detention camps until December 1944, when the War Department finally announced the revocation of the exclusion policy and declared that the camps would be closed. This was two-and-a-half years after the June 2, 1942, Battle of Midway, which had left the Japanese naval fleet virtually destroyed, leading U.S. Naval Intelligence to send reports to Washington dismissing any further threat of a West Coast invasion.

Supreme Court Challenges

Though the majority of the Japanese Americans on the West Coast obeyed the harsh curfews, evacuations, and detentions imposed on them in a surprisingly quiet and orderly fashion, more than 100 individuals attempted to challenge the government's orders. Most of these people were convicted in court and lacked the financial resources to appeal. But a few cases reached the Supreme Court, including *Yasui v. United States,* 320 U.S. 115, 63 S. Ct. 1392, 87 L. Ed. 1793 (1943), *Hirabayashi v. United States,* 320 U.S. 81, 63 S. Ct. 1375, 87 L. Ed. 1774 (1943), and KOREMATSU V. UNITED STATES, 323 U.S. 214, 65 S. Ct. 193, 89 L. Ed. 194 (1944).

Minoru Yasui, an attorney from Portland, Oregon, raised the first legal test of De Witt's curfew orders. A well-educated and very patriotic U.S. citizen of Japanese ancestry, Yasui did not object to the general principle of the curfew order or to a curfew applied only to aliens. His objection was that De Witt's orders applied to all persons of Japanese ancestry, both citizens and noncitizens alike. "That order," Yasui declared, "infringed on my rights as a citizen" (Irons 1983, 84). Determined to become a TEST CASE for the constitutionality of De Witt's curfews, Yasui walked into a Portland police station on the evening of March 28, 1942, hours after the curfew was first imposed and demanded to be arrested for curfew violation.

Yasui was arrested. His case went to trial in June 1942, where he argued that Executive Order No. 9066 was unconstitutional. The judge in the case, James Alger Fee, did not return a VERDICT until November, when he found Yasui guilty. Fee asserted that Yasui's previous employment as a Japanese consular agent had constituted a FORFEITURE of his U.S. citizenship, and thus he was subject to the curfew order as an enemy alien (*Yasui,* 48 F. Supp. 40 [D. Or. 1942]). Fee sentenced Yasui to the maximum penalty, one year in prison and a fine of $5,000. The Supreme Court unanimously upheld his conviction for curfew violation, though it found that Fee had been incorrect in holding that Yasui had forfeited his U.S. citizenship.

The second test case involved Gordon Kiyoshi Hirabayashi, a 24-year-old student at the University of Washington. A committed Christian and a pacifist, Hirabayashi also decided to make himself a test case for the constitutionality of De Witt's orders, particularly

the evacuation order scheduled to take effect on May 16, 1942. He therefore chose to break the curfew three times between May 4 and May 10, and recorded these instances in his diary. On May 16 Hirabayashi went to the FEDERAL BUREAU OF INVESTIGATION office in Seattle, accompanied by his lawyer, and told a special agent there that he had no choice but to reject the evacuation order.

Hirabayashi was convicted of intentionally violating De Witt's evacuation and curfew orders. The Supreme Court ruled on Hirabayashi's case on June 21, 1943, upholding his conviction for violating curfew. The Court avoided ruling on the issue of whether evacuation was constitutional by arguing that since Hirabayashi's sentences on the two counts were to run concurrently, his conviction on the curfew violation was sufficient to sustain the sentence.

The Court did, however, rule on one important constitutional issue in *Hirabayashi:* the question of whether De Witt's curfew orders could be applied selectively on the basis of race. Writing for the majority, Chief Justice HARLAN F. STONE emphasized that it was necessary for the Court to defer to the military in security matters, and thus the Court was bound to accept the assertion that "military necessity" required Japanese Americans to be selectively subject to the curfew order. Stone argued that the government needed only a minimum rational basis for applying laws on a racial basis, declaring that "the nature and extent of the racial attachments of our Japanese inhabitants to the Japanese enemy were ... matters of grave concern." Citing undocumented allegations about the involvement of Japanese Americans in espionage activities, Stone concluded that the "facts and circumstances" showed "that one racial group more than another" constituted "a greater source of danger" to the army's wartime efforts and thus the military was justified in applying its orders solely on the basis of race.

The third test case involved Fred Toyosaburo Korematsu, a 23-year-old welder living in San Leandro, California. Korematsu had no intention of becoming a test case for the constitutionality of De Witt's orders. He simply neglected to report for evacuation because he wanted to remain with his Caucasian fiancée and because he believed that he would not be recognized as a Japanese American. He was soon arrested by the local police and was convicted of remaining in a military area contrary to De Witt's exclusion orders.

When Korematsu's case reached the Supreme Court in 1944, the Court upheld Korematsu's conviction, arguing that the "Hirabayashi conviction and this one thus rest on the ... same basic executive and military orders, all of which orders were aimed at the twin dangers of espionage and sabotage." Noting that being excluded from one's home was a "far greater deprivation" than being subjected to a curfew, Justice Hugo L. Black wrote in the majority opinion that "we are unable to conclude that it was beyond the war power of Congress and the Executive to exclude those of Japanese ancestry from the West Coast area at the time they did." Black based his argument on the minimum rationality test established in *Hirabayashi* and on the military's assertion that Japanese Americans had to be evacuated en masse because it "was impossible to bring about an immediate segregation of the disloyal from the loyal."

But later in December 1944, the Supreme Court was faced with a more precise and pressing issue. Now came before it a matter wherein a United States loyal citizen of Japanese ancestry had been removed from employment and interned. The case of *Ex Parte Endo,* 323 U.S. 283 (1944), came before the Court as an appeal on a WRIT of HABEAS CORPUS. Mitsuye Endo was a female federal CIVIL SERVICE employee at the California State Highway Commission. In 1942 she was dismissed from her stenography job and ordered by the military to a detention center. Endo was an U.S. citizen; her brother was serving in the U.S. Army. While at the relocation camp, her attorney filed a writ of habeas corpus in federal district court, asking for her discharge from camp and that her liberty be restored. The petition was denied and the Ninth CIRCUIT COURT of Appeals certified the matter to the U.S. Supreme Court.

Again, the high court rendered its decision without coming to the underlying constitutional issue which was argued below. The Court, however, concluded that Endo was entitled to an unconditional release by the War Relocation Authority. It approached the construction of E.O. 9066 as it would judicially approach a piece of legislation. In so doing, it concluded that E.O. 9066, along with the underlying act of March 21, 1942, which ratified and confirmed

it, was a war measure. Therefore, the Court reasoned, power to detain a concededly loyal citizen could not be implied from a power to protect the war effort from espionage and sabotage; it afforded no basis for keeping loyal U.S. citizens of Japanese ancestry in custody on grounds of community hostility.

Interestingly, the U.S. government, apprehending an unfavorable decision in *Endo,* announced the end of the exclusion order just the day before the Supreme Court issued its opinion. The last of ten major detention camps, Tule Lake, closed in March 1946.

The Movement to Redress Victims

Though the move to evacuate and detain Japanese Americans on the West Coast enjoyed substantial support from most U.S. citizens, it incited significant protests as well. Some critics, such as Eugene V. Rostow, professor and later dean of the Yale Law School, contended that the evacuation program was a drastic blow to civil liberties and that it was in direct contradiction to the constitutional principle that punishment should be inflicted only for individual behavior, not for membership in a particular demographic group. Others, such as Lieutenant Commander Kenneth D. Ringle, of the Office of Naval Intelligence, questioned the validity of De Witt's assertions concerning the disloyalty of Japanese Americans.

In a memorandum written in February 1942 that became known as the Ringle Report, Ringle estimated that the highest number of Japanese Americans "who would act as saboteurs or agents" of Japan was less than 3 percent of the total, or about 3500 in the United States; the most dangerous of these, he said, were already in custodial detention or were well known to the Naval Intelligence service or the FBI. In his summary Ringle concluded that the "Japanese Problem" had been distorted largely because of the physical characteristics of the people and should be handled based on the individual, regardless of citizenship, and not on race.

The Ringle Report was known to De Witt, who thus knew that Naval Intelligence estimated that at least 90 percent of the army's evacuation of Japanese Americans was unnecessary. In addition, the DEPARTMENT OF JUSTICE knew of the Ringle Report's conclusions when it filed its briefs in the *Hirabayashi* and *Korematsu* cases. A senior JUSTICE DEPARTMENT official, Edward Ennis, had sent a memo to SOLICITOR GENERAL Charles Fahy warning, "I think we should consider very carefully whether we do not have a [legal] duty to advise the Court of the existence of the Ringle memorandum ... It occurs to me that any other course of conduct might approximate the suppression of evidence." But Fahy chose not to mention the Ringle Report in the government's brief, instead asserting that Japanese Americans as an entire class had to be evacuated because "the identities of the potentially disloyal were not readily discoverable," and it would be "virtually impossible" to determine loyalty on the basis of individualized hearings (205).

After the end of the war, some Japanese Americans began to seek financial redress for the losses they had suffered as a result of the government's evacuation program. In 1948 Congress passed the American Japanese Evacuation Claims Act (Pub. L. No. 80-886, ch. 814, 62 Stat. 1231 [codified as amended at 50 U.S.C.A. app. § 1981 (1982)]) to compensate evacuees for property damage. The Justice Department received more than 26,500 claims, and the federal government ultimately paid out approximately $37 million. Because the act required elaborate proof of property losses, the amount paid out was much less than full compensation for losses sustained.

By the 1970s and 1980s, the movement to achieve redress had won additional victories. In 1976 President GERALD R. FORD formally revoked Executive Order No. 9066 and proclaimed, "We know now what we should have known then—not only was [the] evacuation wrong, but Japanese Americans were and are loyal Americans" (Proclamation No. 4417, 3 C.F.R. 8, 9 [1977]). In 1980 Congress established the Commission on Wartime Relocation and Internment of Civilians, whose report, released in 1983, concluded that 9066 was not justified by military necessity and that the policies of detention and exclusion were the result of racial prejudice, war hysteria, and a failure of political leadership. The commission recommended several types of redress. In 1988 Congress passed the Civil Liberties Act of 1988 (50 U.S.C.A. app. § 1989 [1988]), which provided for a national apology and $20,000 to each victim to compensate for losses suffered as a result of the evacuation program.

A final major development in the redress movement has been the use of CORAM NOBIS, the

common-law writ of error, to reopen the *Korematsu, Yasui,* and *Hirabayashi* convictions. A writ of *CORAM nobis* allows one who has served time for a criminal conviction to petition the court for a vacation of that conviction. Vacations are granted if there is evidence of prosecutorial impropriety or if there are special circumstances or errors that resulted in a MISCARRIAGE OF JUSTICE. In 1983 U.S. district court judge Marilyn Hall Patel granted a vacation in the *Korematsu* case. Patel based her decision on the newly discovered evidence that "the Government knowingly withheld information from the Courts when they were considering the critical question of military necessity in this case" (*Korematsu,* 584 F. Supp. 1406 [N.D. Cal. 1984]). Yasui's and Hirabayashi's convictions were also vacated on this basis (*Yasui,* No. 83-151 [D. Or. Jan. 26, 1984]; *Hirabayashi,* 828 F.2d 591 [9th Cir. 1987]).

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Coram Nobis; Discrimination; Prejudice; Vacate.

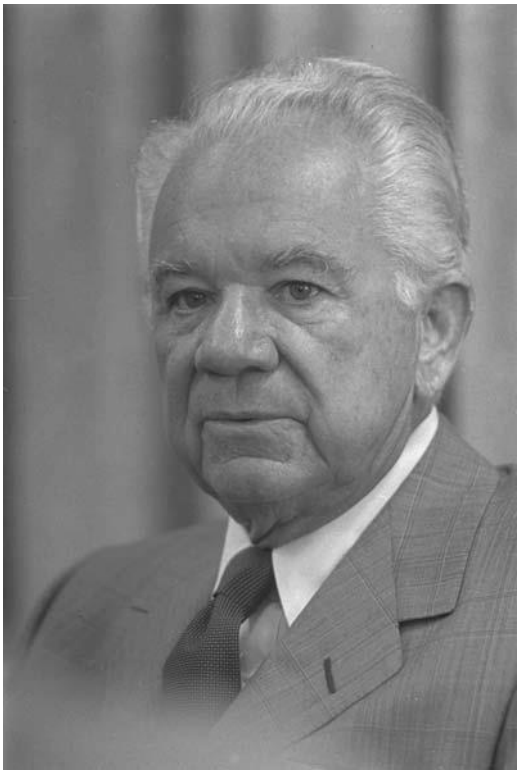
v JAWORSKI, LEON

Leon Jaworski, like RICHARD M. NIXON, came from a poor, deeply religious background. In the Watergate scandal, Jaworski's rise to national prominence almost seemed to parallel Nixon's descent. Watergate is the name given to the scandal that began with the bungled BURGLARY in June 1972 of the Democratic National Committee's headquarters in the Watergate apartment complex in Washington, D.C., by seven employees of the Committee to Re-Elect the President (CREEP). A lifelong Democrat who twice voted for the Republican Nixon, Jaworski was responsible for bringing to light many damaging facts of the Watergate break-in and subsequent cover-up, ultimately leading to the only resignation ever by a U.S. president. When Nixon appointed him to the post of special prosecutor on the case November 1, 1973, Jaworski expected to find wrongdoing and possible criminal activity by Nixon's aides, but the possibility that the president was involved never occurred to him.

ONE OF THE THINGS THAT THE NEXT GENERATION WILL LEARN FROM WATERGATE IS THAT THE PRESIDENT IS SUBJECT TO THE LAWS HE IS SWORN TO ADMINISTER. HIS POWERS ARE NOT ABSOLUTE.
—LEON JAWORSKI

Jaworski was born in Waco, Texas, on September 19, 1905, to an Austrian mother and a Polish father. He was christened Leonidas, after a king of ancient Sparta who courageously gave his life for his beliefs. Jaworski's father, an evangelical minister, instilled in him from an early age a deep and abiding Christian faith and sense of duty. By the time he was 14, he was the champion debater at Waco High School. He graduated at age sixteen and enrolled in Baylor University. After one year of undergraduate work, he was admitted to the law school. He graduated at the top of his class in 1925, and became the youngest person ever admitted to the Texas bar.

In 1926 Jaworski obtained a master of laws degree from GEORGE WASHINGTON University, in Washington, D.C., and then returned to Waco to practice. Prohibition was at its height, and Jaworski began his career defending moonshiners and bootleggers. His flair in the courtroom developed early. In one capital MURDER case, he concealed a stiletto in his pocket. During the trial he whipped it out and tried to hand it to a juror, exhorting the jury to kill the DEFENDANT immediately instead of sending him to the electric chair later. In 1931 he joined the Houston firm of Fulbright, Crooker, Freeman, and Bates. The firm, eventually known as Fulbright and Jaworski, grew to be one of the



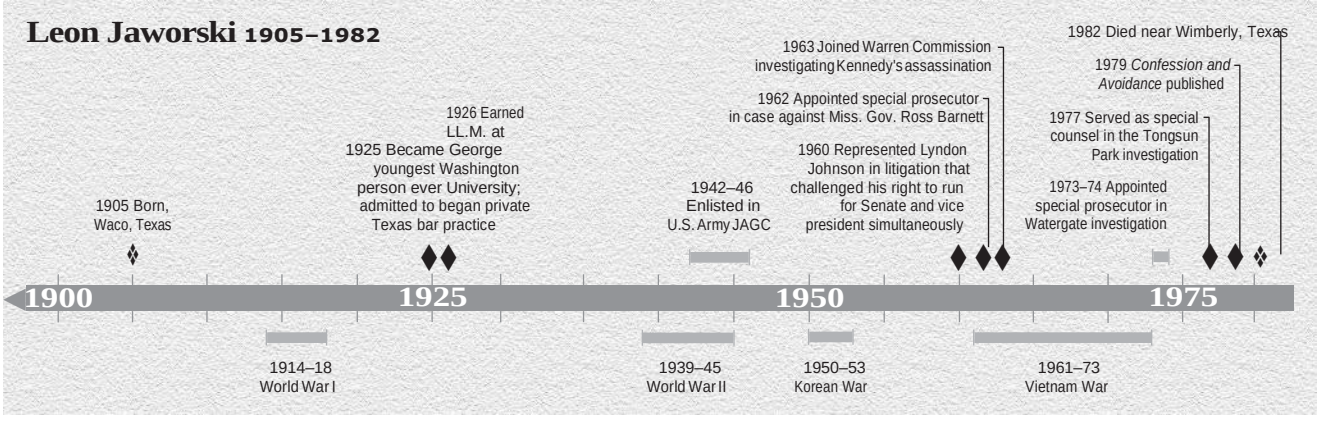
Leon Jaworski.
LIBRARY OF CONGRESS

largest in the United States. It was the first in Houston to hire black and Jewish staff.

Jaworski enlisted in the Army in 1942, and was commissioned as a captain in the JUDGE ADVOCATE General's Corps, the legal branch of the Army. One of the first prosecutors of WAR CRIMES in Europe, Jaworski successfully brought action against a German civilian mob that stoned to death six U.S. airmen, and employees of a German sanatorium who participated in the "mercy killing" of more than 400 Poles and Russians. He was also in charge of the war crimes investigation of the Dachau concentration camp, which led to proceedings in which all forty defendants were convicted and thirty-six were sentenced to death.

The Colonel, as he became known after his Army stint, returned to Houston and quickly became enmeshed in representing bankers and big business. LYNDON B. JOHNSON became a client and friend. In 1960 Jaworski handled litigation that challenged Johnson's right to run simultaneously for the Senate and the vice presidency. The case was resolved in Johnson's favor a few days before his inauguration as VICE PRESIDENT. In 1962 U.S. attorney general ROBERT F. KENNEDY appointed Jaworski special prosecutor in a contempt case against Mississippi governor Ross Barnett. The segregationist Barnett had defied a federal order to admit the first black student, JAMES MEREDITH, to the University of Mississippi. It was a volatile time of highly unpopular, court-ordered desegregation in the South, and Jaworski endured some vicious criticism by colleagues, clients, and southerners for prosecuting the case. Following President John F. Kennedy's ASSASSINATION in Dallas in 1963, Jaworski worked with the WARREN COMMISSION, as the Commission investigated Kennedy's assassination, acting as liaison between Texas agencies and the federal government.

In October 1973 Watergate special prosecutor ARCHIBALD COX was fired in the so-called Saturday Night Massacre when he tried to force Nixon into supplying tapes pursuant to a SUBPOENA. In response to pressure from Cox, Nixon ordered Attorney General ELLIOT RICHARDSON to fire Cox; Richardson refused because Cox and Congress had received assurances that the special prosecutor would not be fired except for



gross improprieties. Richardson resigned rather than fire Cox. Deputy Attorney General William Ruckelshaus also resigned after refusing to fire Cox. Nixon's order was finally carried out by SOLICITOR GENERAL Robert Bork. Jaworski accepted Cox's vacated position, on the condition that he would not be dismissed except for extraordinary impropriety and that he would have the right to take the president to court if necessary. His new office was in charge of collecting evidence, presenting it to the Watergate grand juries, and directing the prosecution in any trials resulting from GRAND JURY indictments. His job was separate from, although in many respects parallel to, that of the House Judiciary Committee, which was conducting its own investigation.

Jaworski's integrity was never questioned, but his appointment was greeted with suspicion. Some felt he was too much in awe of the presidency to execute the job whatever the consequences. Almost immediately, however, he began showing his mettle. He soon learned of an eighteen-minute gap on a crucial tape that had been subpoenaed but had not yet been turned over to the special prosecutor's office. The White House wangled for a delay in informing federal judge John J. Sirica of the apparent erasure. Jaworski pushed forward, and Sirica ordered that all subpoenaed tapes be turned over within days. Shortly thereafter the tapes were submitted, and Jaworski and his staff listened in disbelief to one from March 21, 1973, in which the president and White House counsel John W. Dean III discussed BLACKMAIL, payment of hush money, and PERJURY in connection with the cover-up of Watergate.

As Jaworski and his staff sifted through evidence and presented it to the grand jury, Jaworski was forced to decide whether a sitting president could be indicted for offenses for which the grand jury had heard evidence. He concluded that the Supreme Court might well find such an action to be unconstitutional, that the nation would suffer great trauma in the interim, and that the impeachment inquiry by the House of Representatives was the appropriate forum for determining whether Nixon should be removed from office. Carefully wielding a prosecutor's influence with the grand jury, he convinced the jurors to name Nixon as an unindicted coconspirator. This information was not to be made public until the trial of the grand jury's other indictees. At Jaworski's prompting, and with Judge Sirica's approval, evidence heard by the grand jury regarding Nixon's involvement was forwarded to the House Judiciary Committee and was kept from the public until later.

In the spring of 1974, Jaworski subpoenaed 64 more tapes. The White House sought to quash the subpoena, and made a desperate attempt to curry public support by releasing edited transcripts of some tapes. The White House claimed that as unsettling as the transcripts were, they contained no evidence of crime, and that they represented all the relevant tapes possessed by the White House. The prosecutors found many important omissions from the transcripts. Moreover, the White House claimed that a key tape from June 23, 1972 (six days after the Watergate break-in) was unaccountably missing. When Judge Sirica ordered the White House to turn over the subpoenaed tapes, it immediately appealed to the District of Columbia Court of Appeals. Jaworski then had to decide whether to attempt to bypass the court of appeals and ask the Supreme Court to review Sirica's order. A special rule permitted such a bypass in cases that required immediate settlement in matters of "imperative public importance." Jaworski's decision would be crucial because it was unclear whether the Supreme Court would bypass the court of appeals, something it had done only twice since the end of WORLD WAR II. If the Supreme Court refused to accept the case, trials against defendants already indicted would be delayed and momentum in the investigation would be lost. Jaworski decided to seek review in the Supreme Court.

Jaworski's gambit paid off. The Supreme Court agreed to hear the case. On July 24, 1974, it ruled 8–0, with Justice WILLIAM H. REHNQUIST abstaining, that the special prosecutor had the right and the power to sue the president, and that the president must comply with the subpoena. Within days of the ruling, the tapes started trickling in to the special prosecutor's office, including one of a conversation between President Nixon and H. R. Haldeman on June 23, 1972. This tape became known as the smoking gun, because it proved decisively that the president not only knew of the Watergate cover-up but also participated in it, only six days after the break-in. This was contrary to earlier assertions that President Nixon first learned of the cover-up in March 1973.

On July 27, 1974, the House Judiciary Committee passed a first article of impeachment, charging that President Nixon had obstructed justice in attempting to cover up Watergate. Within days the Judiciary Committee passed two more ARTICLES OF IMPEACHMENT, charging abuse of PRESIDENTIAL POWERS and defiance of subpoenas. The committee's action, in conjunction with Jaworski's win in the Supreme Court and a concomitant public release of the tapes, finally left Nixon facing almost certain impeachment. On August 9, 1974, he resigned from the presidency.

Nixon's resignation did not end the matter for the special prosecutor. Most of Jaworski's staff pushed hard for an indictment of the former president. Public sentiment seemed to favor indictment. Jaworski studied the issue, but he considered the problem of getting the president a fair trial to be paramount and almost insurmountable.

On September 9, 1974, President GERALD R. FORD pardoned Nixon of all possible federal crimes he may have committed while serving as president. The special prosecutor's office then examined whether the pardon could be attacked in court, on the ground that it preceded any indictment or conviction. Jaworski concluded that Ford was acting within his CONSTITUTIONAL powers in granting the pardon. He declined to precipitate a court challenge by indicting Nixon after the pardon, as some called for him to do.

Jaworski resigned as special prosecutor on October 25, 1974. Watergate prosecutions continued for some time thereafter under a new special prosecutor.

In 1977 Jaworski reluctantly agreed to serve as special counsel to the House Ethics Committee's investigation to determine whether members of the House had indirectly or directly accepted anything of value from the government of the Republic of Korea. The investigation, known as Koreagate or the Tongsun Park investigation, potentially involved hundreds of members of Congress and their families and associates, and charges of bribery and influence peddling sought by way of envelopes stuffed with $100 bills. Tongsun Park was a central figure in the Korean lobbying scandal, but exactly who he was remains unclear. U.S.-educated, at times he may have posed as a South Korean ambassador and may have been employed by the Korean CIA or been an agent of the Korean government. He was found trying to enter the United States with a list containing the names of dozens of members of Congress including information regarding contributions. Jaworski's work was thwarted by difficulties getting key Korean figures to testify under oath, as well as the difficulties inherent when a body investigates itself. Jaworski was disappointed with the fruits of his labor. Only two former members of Congress faced criminal charges, two private citizens were indicted and convicted, and three members of Congress were reprimanded.

Jaworski died of a heart attack at his beloved Circle J Ranch, near Wimberly, Texas, on December 9, 1982, while chopping wood, a favorite pastime. Married for fifty-one years, he had three children and five grandsons.

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v JAY, JOHN

John Jay was a politician, statesman, and the first chief justice of the Supreme Court. He was one of the authors of *The Federalist*, a collection of influential papers written with JAMES MADISON and ALEXANDER HAMILTON prior to the ratification of the Constitution.

Jay was born in New York City on December 12, 1745. Unlike most of the colonists in the New World, who were English, Jay traced his ancestry to the French Huguenots, His grandfather, August Jay, immigrated to New York in the late seventeenth century to escape the persecution of non-Catholics under Louis XIV. Jay graduated from King's College, now known as Columbia University, in 1764. He was admitted to the bar in New York City in 1768.

One of Jay's earliest achievements was his participation in the settlement of the boundary line between New York and New Jersey in 1773. During the time preceding the Revolutionary War, Jay actively protested against British treatment of the colonies but did not fully

advocate independence until 1776, when the DECLARATION OF INDEPENDENCE was created. Jay then supported independence wholeheartedly. He was a member of the CONTINENTAL CONGRESS from 1774 to 1779, acting as its president from 1778 to 1779.

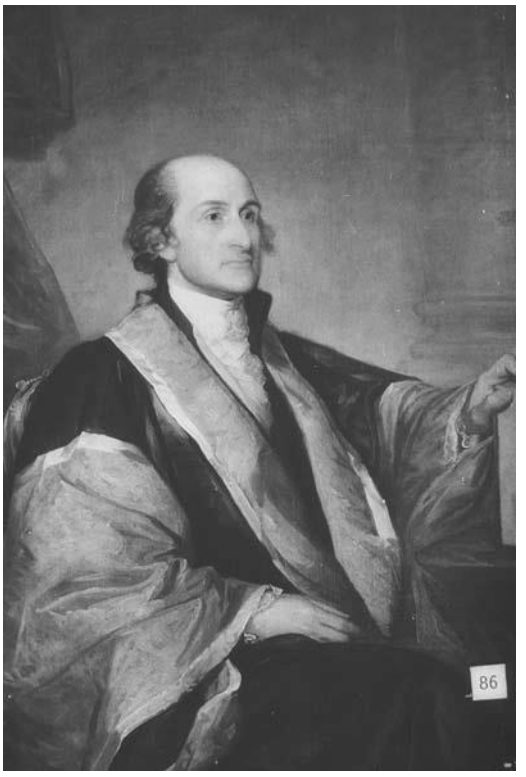
In 1776 Jay was a member of the Provincial Congress of New York and was instrumental in the formation of the constitution of that state. From 1776 to 1778 he performed the duties of New York chief justice.

Jay next embarked on a foreign service career. His first appointment was to the post of minister plenipotentiary to Spain in 1779, where he succeeded in gaining financial assistance for the colonies.

In 1782 Jay joined BENJAMIN FRANKLIN in Paris for a series of peace negotiations with Great Britain. In 1784, Jay became secretary of foreign affairs and performed these duties until 1789. During his term, Jay participated in the arbitration of various international disputes.

Jay recognized the limitations of his powers in foreign service under the existing government of the ARTICLES OF CONFEDERATION, and this made him a strong supporter of the Constitution. He publicly displayed his views in the five papers he composed for *The Federalist* in 1787 and 1788. Jay argued for ratification of the Constitution and the creation of a strong federal government.

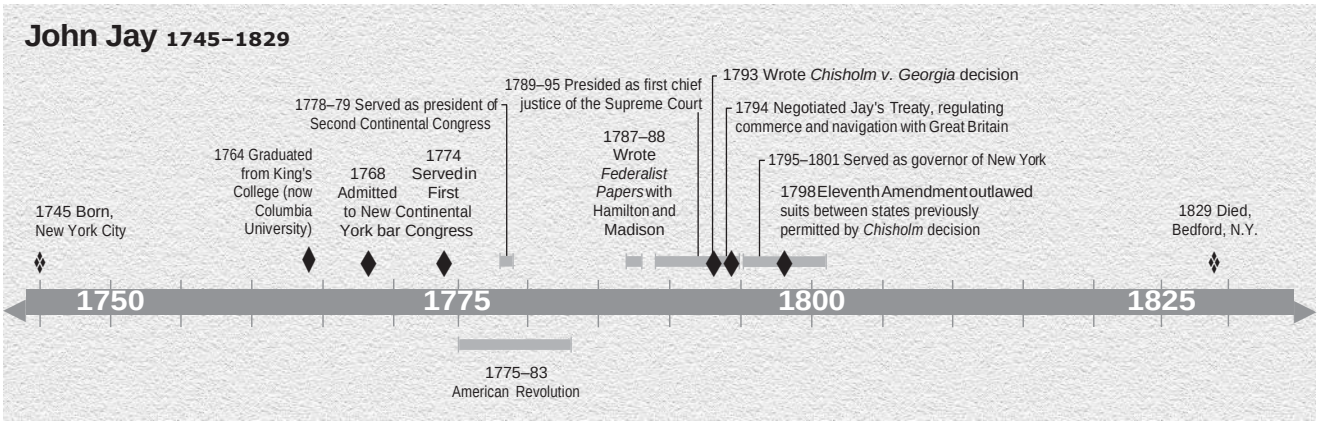
In 1789, Jay earned the distinction of becoming the first chief justice of the United States. During his term, which lasted until 1795, Jay rendered a decision in CHISHOLM V. GEORGIA, 2 U.S. (2 Dall.) 419, 1 L.Ed. 440 (1793), which subsequently led to the enactment of the



John Jay.
PAINTING BY STUART GILBERT. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

ELEVENTH AMENDMENT to the Constitution. This 1793 case involved the ability of inhabitants of one state to sue another state. The Supreme Court recognized this right but, in response, Congress passed the Eleventh Amendment denying the right of a state to be prosecuted or sued by a resident of another state in federal court.

During Jay's tenure on the Supreme Court, he was again called upon to act in foreign service. In 1794 he negotiated a treaty with Great Britain known as Jay's Treaty. This agreement regulated commerce and navigation and settled many



A DISTINCTIVE CHARACTER OF THE NATIONAL GOVERNMENT, THE MARK OF ITS LEGITIMACY, IS THAT IT OWES ITS EXISTENCE TO THE ACT OF THE WHOLE PEOPLE WHO CREATED IT.
—JOHN JAY

outstanding disputes between the United States and Great Britain. The treaty, under which disputes were resolved before an international commission, was the origin of modern international arbitration.

In 1795 Jay was elected governor of New York. He served two terms, until 1801, at which time he retired. He died May 17, 1829.

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J.D.

An abbreviation for Juris Doctor, the degree awarded to an individual upon the successful completion of law school.

v JEFFERSON, THOMAS

Thomas Jefferson served as an American Revolutionary and political theorist and as the third PRESIDENT OF THE UNITED STATES. Jefferson, who was a talented architect, writer, and diplomat, played a profound role in shaping U.S. government and politics.

Jefferson was born April 13, 1743, at Shadwell, in Albemarle County, Virginia. His father was a plantation owner and his mother belonged to the Randolph family, whose members were leaders of colonial Virginia society. Jefferson graduated from the College of William and Mary in 1762, and worked as a surveyor before studying law with GEORGE WYTHE. He was admitted to the Virginia bar in 1767.

His interest in colonial politics led to his election to the Virginia House of Burgesses in 1769. In the legislature he became closely aligned with PATRICK HENRY, Richard Henry Lee, and Francis Lightfoot Lee, all of whom espoused the belief that the British Parliament had no control over the American colonies. He helped form the Virginia Committee of Correspondence, which protested legislation imposed on the colonies by Great Britain.

In 1774 Jefferson wrote *A Summary View of the Rights of British America,* a pamphlet that denied the power of Parliament in the colonies and stated that any loyalty to England and the king was to be given by choice. He attended the Second CONTINENTAL CONGRESS in 1775 and drafted the *Reply to Lord North,* in which Congress rejected the British prime minister's proposal that Parliament would not tax the colonists if they agreed to tax themselves.

After the Revolutionary War began, Jefferson and four others were asked to draft a DECLARATION OF INDEPENDENCE. Jefferson actually wrote the Declaration of Independence in 1776, which stated the arguments justifying the position of the American Revolutionaries. It also affirmed the natural rights of all people and affirmed the right of the colonists to "dissolve the political bands" with the British government.

Jefferson served in the Virginia House of Delegates from 1776 to 1779 and became governor of Virginia in 1779. He was responsible for many changes in Virginia law, including the ABOLITION of religious persecution and the end to entail (inheritance of land through a particular line of descent) and PRIMOGENITURE (inheritance only by the eldest son). Jefferson also disestablished the Anglican Church as the state-endorsed RELIGION. Jefferson's term as governor expired in 1781, the same year the British invaded Virginia. He was at first blamed for the state's lack of resistance but later cleared after an official investigation.

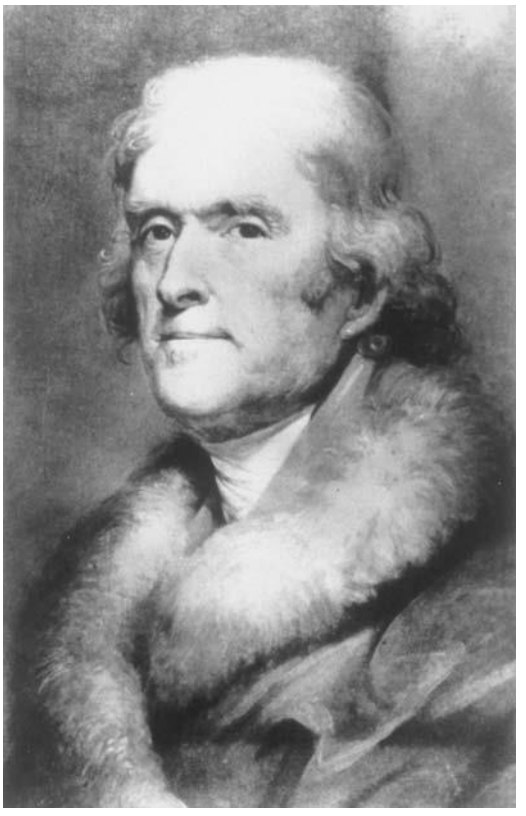
From 1783 to 1784 he was a member of the Continental Congress, where he contributed a monetary program, and secured approval of the TREATY OF PARIS, which ended the Revolutionary War. As a member of that congress he also drafted a decree for a system of government for the Northwest Territory, which lay west of the Appalachian Mountains. This decree was

later incorporated into the NORTHWEST ORDINANCE of 1787.

Jefferson served as minister to France from 1784 to 1789. In 1790 he reentered politics as secretary of state in the cabinet of President GEORGE WASHINGTON. Jefferson soon became embroiled in conflict with ALEXANDER HAMILTON, the secretary of the treasury. Jefferson did not share Hamilton's Federalist views, which he believed favored the interests of business and the upper class. Jefferson, a proponent of agricultural interests, disliked the Federalist's desire to expand the power of the federal government.

The chief dispute between them was over the BANK OF THE UNITED STATES, which Hamilton approved of and Jefferson attacked as unconstitutional. Hamilton won the issue, and Jefferson and his supporters began to form a group known as Republicans, which evolved into the current DEMOCRATIC PARTY. In 1791 editor Philip M. Freneau published Republican views in the *National Gazette,* which increased the agitation between Jefferson and Hamilton. Jefferson resigned his position in 1793.

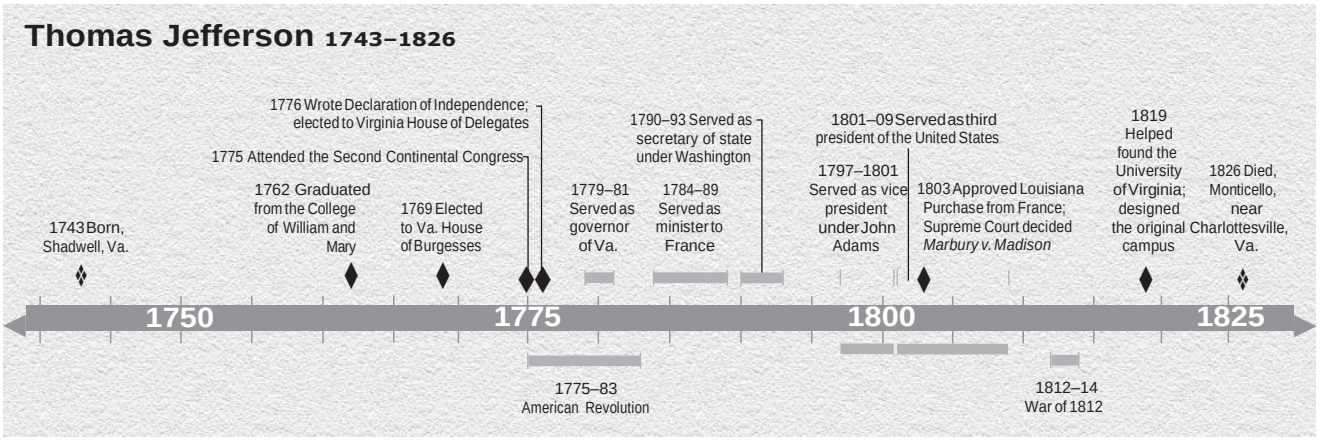
After JOHN ADAMS was elected president in 1796, Jefferson served as his VICE PRESIDENT and presiding officer in the Senate. In 1798 he opposed Congress's adoption of the ALIEN AND SEDITION ACTS (1 Stat. 570, 596), which provided for the deportation or imprisonment of any citizen or alien judged dangerous to the U.S. government. As a result Jefferson and JAMES MADISON drafted the Kentucky Resolutions, which denounced the constitutionality of these acts. These resolutions, which were adopted by the Kentucky and Virginia legislatures, declared that the federal government could not extend its



Thomas Jefferson.
LIBRARY OF CONGRESS

powers over the states unless the Constitution expressly granted authority. The resolutions were the first affirmation of states' rights and were central to Jefferson's belief that state and local governments were the most democratic political institutions.

The presidential election in 1800 ended in a tie between Jefferson and AARON BURR. The House of Representatives decided the election. Hamilton, who despised Burr even more than Jefferson, lobbied the Federalists in the House



to elect Jefferson. Jefferson won the election and became the first president to be sworn into office in Washington, D.C.

As president, Jefferson reduced spending and appointed Republicans to assume former Federalist positions. He made a lasting contribution to legislative procedure when he composed in 1801 *A Manual of Parliamentary Practice,* which is still used in the early twenty-first century. He approved the LOUISIANA PURCHASE from France in 1803, and supported the Lewis and Clark Expedition to explore the West from 1803 to 1806. He supported the repeal of the Judiciary Act of 1801, which would have created federal courts of appeals and would have encouraged appeals from state courts.

Jefferson also expressed concern about the decision in MARBURY V. MADISON, 5 U.S. 137, 2 L. Ed. 60 (1803), which declared that the Supreme Court could review the constitutionality of acts of Congress. The concept of JUDICIAL REVIEW, which is not described in the Constitution, expanded the power of the judiciary. Jefferson and the Republicans worried that Federalist-appointed judges would use judicial review to strike down Republican legislation.

THAT GOVERNMENT IS THE STRONGEST OF WHICH EVERY MAN HIMSELF FEELS A PART.
—THOMAS JEFFERSON

After he was reelected in 1805, Jefferson encountered the problem of attacks on independent U.S. ships by England and France, which were engaged in war. To discourage these attacks, Congress passed the Nonimportation Act of 1806 (2 Stat. 315), forbidding the importation of British goods, and the EMBARGO ACT of 1807 (2 Stat. 451), prohibiting the exportation of U.S. goods to England and France. These measures proved to be detrimental to U.S. commerce.

After the end of his second presidential term, Jefferson retired to his estate, Monticello. He served as president of the American Philosophical Society from 1797 to 1815 and helped found the University of Virginia in 1819.

Jefferson's *Notes on the State of Virginia,* published in 1784 and 1785, remain an important historical resource. Written to a French correspondent, the book contains social, political, and economic reflections that show Jefferson to be a person committed to rational thought. The book also reveals that Jefferson, a slaveholder, believed that African Americans were inferior to whites. Throughout his life Jefferson defended the institution of SLAVERY, casting a cloud over his professed belief in human dignity.

Jefferson died July 4, 1826, at Monticello, near Charlottesville, Virginia.

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CROSS REFERENCE

Marshall, John.

JEFFERSONIAN REPUBLICAN PARTY

See DEMOCRATIC-REPUBLICAN PARTY.

JEOPARDY

Danger; hazard; peril. In a criminal action, the danger of conviction and punishment confronting the defendant.

A person is in jeopardy when he or she is placed on trial before a court of competent jurisdiction upon an indictment or information sufficient in form and substance to uphold a conviction, and a jury is charged or sworn. Jeopardy attaches after a valid indictment is found and a PETIT JURY is sworn to try the case.

CROSS REFERENCE

Double Jeopardy.

JETSAM

The casting overboard of goods from a vessel, by its owner, under exigent circumstances in order to provide for the safety of the ship by lightening its cargo load.

JIM CROW LAWS

The Jim Crow Laws emerged in southern states after the U.S. CIVIL WAR. First enacted in the 1880s by lawmakers who were bitter about their loss to the North and the end of SLAVERY, the statutes separated the races in all walks of life. The resulting legislative barrier to equal rights

created a system that favored whites and repressed blacks, an institutionalized form of inequality that grew in subsequent decades with help from the U.S. Supreme Court. Although the laws came under attack over the next half century, real progress against them did not begin until the Court began to dismantle segregation in the 1950s. The remnants of the Jim Crow system were finally abolished in the 1960s through the efforts of the CIVIL RIGHTS MOVEMENT.

The term "Jim Crow" laws evidently originated from a minstrel show character developed during the mid-nineteenth century. A number of groups of white entertainers applied black cork to their faces and imitated Negro dancing and singing routines. Such acts became popular in several northern cities. One of the performers reportedly sang a song with the lyrics, "Weel about and turn about and do jis so, Eb'ry time I weel about I jump Jim Crow." The moniker Jim Crow later became synonymous with the segregation laws.

The origins of Jim Crow lie in the battered South of the mid-nineteenth century. The Civil War had ended, but its antagonisms had not; the war of values and political identity continued. Many whites refused to welcome blacks into civic life, believing them to be inferior and resenting northern demands in the era of Reconstruction, especially the requirement that southern states ratify the THIRTEENTH AMENDMENT, which would abolish slavery. Southern states initially resisted by passing so-called BLACK CODES, which prohibited former slaves from carrying firearms or joining militias. More hostility followed when Congress enacted the CIVIL RIGHTS Act of 1875 (18 Stat. 335), which guaranteed blacks access to public facilities. As the federal government pressed the South to enfranchise blacks, a backlash developed in the form of state regulations that separated whites from blacks in public facilities.

In the late nineteenth century, southern states took comfort from two U.S. Supreme Court decisions. First, in 1883, the Court struck down the Civil Rights Act of 1875 as unconstitutional, in the so-called CIVIL RIGHTS CASES, 109 U.S. 3, 3 S. Ct. 18, 27 L. Ed. 835. It ruled that Congress had exceeded its powers under the Reconstruction amendments. This decision encouraged southern states to extend Jim Crow restrictions, as in an 1890 Louisiana statute that

In the southern states, Jim Crow laws permeated nearly every part of public life. Dr. Charles N. Atkins and family stand outside the Santa Fe Depot waiting rooms in Oklahoma City in 1955.

AP IMAGES

required white and "colored" persons to be furnished "separate but equal" accommodations on railway passenger cars. In fact, that law came under attack in the Court's next significant decision, the 1896 case of PLESSY V. FERGUSON, 163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256. In *Plessy,* the Court upheld the Louisiana law, ruling that establishing separate-but-equal public accommodations and facilities was a reasonable exercise of the POLICE POWER of a state to promote the public good. *Plessy* kept the principle of SEPARATE BUT EQUAL alive for the next 60 years.

By the start of WORLD WAR I, every southern state had passed Jim Crow laws. Becoming entrenched over the next few decades, the laws permeated nearly every part of public life, including railroads, hotels, hospitals, restaurants, neighborhoods, and even cemeteries. Whites had their facilities; blacks had theirs. The white facilities were better built and equipped. In particular, white schools were almost uniformly better in every respect, from buildings to educational materials. States saw to it that their black citizens were essentially powerless to overturn these laws, using poll taxes and literacy tests to deny them the right to vote. Jim Crow even extended to the federal government: Early in the twentieth century, discriminatory policies were rife throughout federal departments, and not until the KOREAN WAR (1950–53) did the armed forces stop segregating personnel into black and white units.

Opposition to the policy of Jim Crow came chiefly from African Americans. Early leadership was provided by the Afro-American

National League in the 1890s and, after the turn of the century, the influential author and activist W. E. B. Du Bois. The National Association for the Advancement of Colored People (NAACP), established in 1909, became the most powerful force for the repeal of Jim Crow laws during the next half century. The NAACP fought numerous battles in two important arenas: the court of public opinion and the courts of law.

At first, legal progress came slowly. In a series of decisions in the 1940s, the U.S. Supreme Court began to dismantle individual Jim Crow laws and practices. The Court ruled that political parties could not exclude voters from primary elections on the basis of race (*Smith v. Allwright,* 321 U.S. 649, 64 S. Ct. 757, 88 L. Ed. 987 [1944]). It ruled that black passengers on interstate buses need not follow the segregation laws of the states through which those buses passed (*Morgan v. Virginia,* 328 U.S. 373, 66 S. Ct. 1050, 90 L. Ed. 1317 [1946]). It also held that the judiciary could no longer enforce private agreements—called restrictive covenants—that excluded ownership or occupancy of property based on race (*Shelley v. Kraemer,* 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161 [1948]).

By 1950, legal changes were coming in droves. The Court decided in favor of black student Heman Marion Sweatt concerning his appeal for entrance to the University of Texas Law School. In *Sweatt v. Painter,* 339 U.S. 629, 70 S. Ct. 848, 94 L. Ed. 1114 (1950), the Court ruled that the educational opportunities offered to white and black law students by the state of Texas were not substantially equal, and that the EQUAL PROTECTION Clause of the FOURTEENTH AMENDMENT required that Sweatt be admitted to classes with white students at the University of Texas law school. Four years later came the Court's most significant decision affecting Jim Crow: *BROWN V. BOARD OF EDUCATION*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954). Overturning the precedent that had existed since *Plessy* in 1896, the Court in *Brown* decreed unconstitutional the policy of separate-but-equal educational facilities for blacks and whites.

Brown marked a turning point in the battle against the institution of segregation that Jim Crow laws had created. It was not the death knell, however. Much remained to be done, not only to topple legal restrictions but also to remove the barriers of prejudice and violence that stood in the way of full integration. The final blows were administered by the civil rights movement, whose boycotts, sit-ins, and lawsuits continued over the next two decades. By the mid-1960s the last vestiges of legal segregation were ended by a series of federal laws, including the Civil Rights Act of 1964 (42 U.S.C.A. § 2000a et seq.), the VOTING RIGHTS ACT OF 1965 (42 U.S.C.A. § 1971 et seq.), and the FAIR HOUSING ACT OF 1968 (42 U.S.C.A. § 3601 et seq.).

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CROSS REFERENCES

Civil Rights; Equal Protection; Ku Klux Klan; Ku Klux Klan Act; School Desegregation.

J.N.O.V.

See JUDGMENT NOTWITHSTANDING THE VERDICT.

JOBBER

A merchant, middle person, or wholesaler who purchases goods from a manufacturer in lots or bulk and resells the goods to a consumer, or to a retailer, who then sells them to a consumer. One who buys and sells on the stock exchange or who deals in stocks, shares, and securities.

In the law of TRADEMARKS and trade names, the term *jobber* refers to an intermediary who receives goods from manufacturers and sells them to retailers or consumers. In this context a jobber may acquire a trademark and affix it to the goods, even though the jobber did not manufacture the products.

In the law governing monopolies, jobbers are referred to as wholesalers. This body of law involves PRICE-FIXING scenarios, in which, for example, a manufacturer enters into contracts with numerous wholesalers, wherein the latter agree to resell the manufacturer's product at prices set by the manufacturer. Antitrust laws also concern scenarios where, for example, a patent owner who deals through wholesalers

restricts the resale of the patented article to a specified territory, thereby limiting rightful competition between wholesalers.

JOHN DOE OR JANE DOE

A fictitious name used for centuries in the law when a specific person is not known by name.

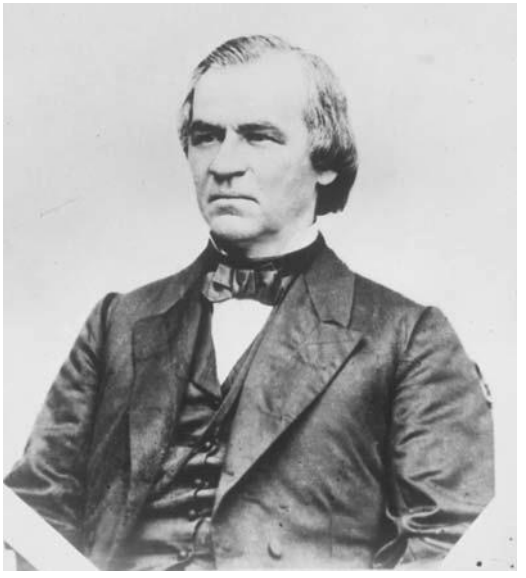
The name *John Doe* can be used in a hypothetical situation for the purpose of argument or illustration. For example, the action of ejectment may be used in some states by a person who has possession of a parcel of land but wishes to clear up some doubt concerning his or her right to hold it. Rather than wait until someone else sues to challenge his or her right to the land, that person may bring an action of ejectment against a fictitious DEFENDANT, sometimes called a CASUAL EJECTOR. John Doe has traditionally been used for the name of this nonexistent party, but he has also been named *Goodtitle.*

John Doe may be used for a specific person who is known but cannot be identified by name. The form *Jane Doe* is often used for anonymous females, and Richard Roe is often used when more than one unknown or fictitious person is named in a lawsuit.

The tradition of fictitious names comes from the Romans, who also had names that they commonly used for fictitious parties in lawsuits. The two names most commonly used were Titius and Seius.

v JOHNSON, ANDREW

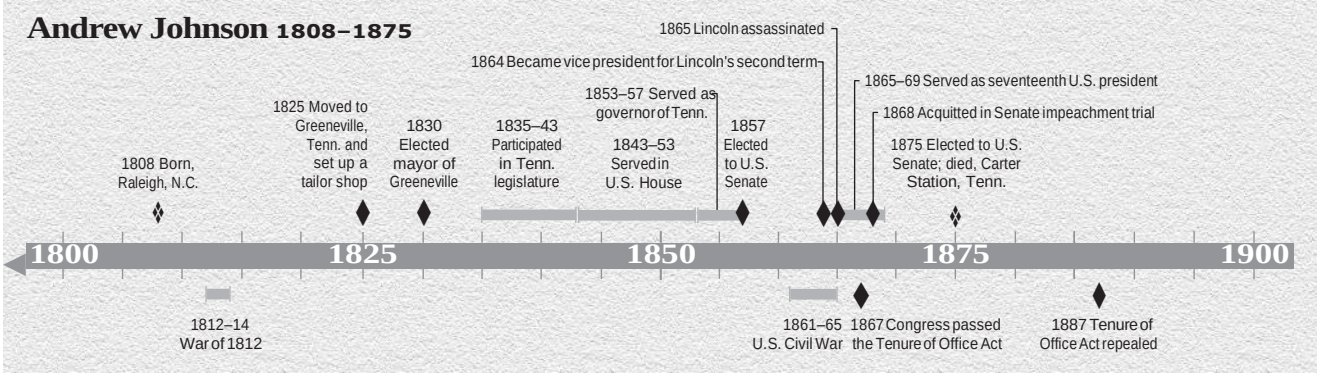
ANDREW JOHNSON ascended to the U.S. presidency after the ASSASSINATION of ABRAHAM LINCOLN. He was the seventeenth president and the first to undergo an impeachment trial.



Andrew Johnson.
THE LIBRARY OF CONGRESS

Johnson was born December 29, 1808, in Raleigh, North Carolina. Little is known of his early life. His ancestry is usually traced only to the family of his father, Jacob Johnson, who raised his family in Raleigh and served as the city's CONSTABLE and sexton, was a porter to the state bank, and was a respected captain in the MILITIA of North Carolina. He was viewed as a hero after saving two men from drowning in a pond outside Raleigh. He died of health complications only a year later, leaving the Johnson family in poverty.

From the age of ten to the age of 17, Johnson worked as an apprentice to a Raleigh tailor, J. J. Selby. Shortly after, he settled in Greeneville, Tennessee, where he opened his own tailor shop. Before he reached the age of 19, he had met Eliza McCardle, a respected teacher in Greeneville, whom he married on May 17, 1827.



Johnson's wife encouraged his aspirations to become politically active, and Johnson turned his tailor shop into a center for men throughout Greeneville to debate and practice their oratory. In 1828 Johnson was overwhelmingly elected city alderman. Two years later his supporters elected him mayor. From 1835 to 1843 he served in the Tennessee legislature. For the next ten years he served in the U.S. House of Representatives. He returned to Tennessee in 1853 and was elected governor of the state. When his term expired in 1857, he became a member of the U.S. Senate, where he served until 1862. He was the only southern senator who refused to resign during the Civil War.

Johnson attracted the attention of President Lincoln. In 1862 Lincoln appointed the Tennessee congressman to serve as military governor of the state. After Johnson effectively managed the state throughout the Civil War, Lincoln selected him to run for VICE PRESIDENT in the 1864 election. The pro-Union ticket of Lincoln and Johnson was victorious.

AMENDMENTS TO THE CONSTITUTION OUGHT NOT BE TOO FREQUENTLY MADE; ... [IF] CONTINUALLY TINKERED WITH IT WOULD LOSE ALL ITS PRESTIGE AND DIGNITY, AND THE OLD INSTRUMENT WOULD BE LOST SIGHT OF ALTOGETHER IN A SHORT TIME.
—ANDREW JOHNSON

Lincoln was assassinated on April 14, 1865, and Johnson assumed the duties of president on April 15. He had been left with the daunting task of assimilating the former confederacy of southern states into the United States. Johnson sought to overlook the secession of the South. He granted many pardons and allowed southern politicians to restore oppressive practices toward former slaves, such as forcing them to give land back to their old masters and depriving them of the right to vote. A group of congressional Republicans, led by Thaddeus Stevens, a representative from Pennsylvania, opposed Johnson's practices. Against Johnson's wishes, the South was put under military rule. The CIVIL RIGHTS Act of 1866, passed in spite of Johnson's veto, granted blacks the right to vote.

In 1867 Congress passed the TENURE OF OFFICE ACT (14 Stat. 430), also over Johnson's veto. This act declared that the president could not, without the Senate's permission, remove from federal office any official whose appointment had been approved by the Senate. In August 1867 Johnson refused to follow the Tenure Act when he requested the removal of Secretary of War EDWIN M. STANTON. He did so on the ground that Stanton had conspired with radical Republicans against the president.

In removing Stanton from his position, Johnson aroused the wrath of even moderate Republicans in Congress. On February 24, 1868, the House passed resolutions to IMPEACH Johnson for HIGH CRIMES AND MISDEMEANORS. By early March, the House had drawn up 12 ARTICLES OF IMPEACHMENT against Johnson. Eight of these concerned his alleged violations of the Tenure of Office Act. The ninth alleged a lesser charge, that he had overstepped his boundaries in suborning a U.S. general. The tenth and eleventh articles accused Johnson of defaming Congress in public speeches. A twelfth and final article, dubbed the omnibus article, was intended to induce senators who might have qualms about specific charges against Johnson to find him guilty on general grounds.

Under the Constitution at least two-thirds of the Senate must vote to impeach the president. In Johnson's case this meant that 36 senators would have to vote for impeachment. The defense knew that vote would have to come from the Senate's 42 Republican members—the Senate's 10 Democrats and 2 Johnsonites were bound to support his ACQUITTAL. Johnson's lawyers were confident that if they could appeal to the senses of moderate Republicans—whom the defense presumed were loyal to the restoration of the Union—the impeachment effort would fail.

On May 16 and May 26, 1868, the Senate voted 35–19 against Johnson on three of the articles of impeachment. By only one vote less than the two-thirds majority necessary to remove him, Johnson was acquitted of the most serious charges. The Senate subsequently adjourned its court, and Johnson was allowed to finish his term. His presidency ended in 1869, and he returned to Tennessee.

The people of Tennessee welcomed Johnson home and elected him to the U.S. Senate in 1875. However, he died soon after the election, on July 31, 1875, near Carter Station, Tennessee. In 1887 the Tenure of Office Act was repealed. In 1926 the Supreme Court rendered an ex post facto (retroactive) judgment declaring the act unconstitutional (272 U.S. 52, 47 S. Ct. 21, 71 L. Ed. 160 1926).

Most scholars and historians have concluded that the impeachment charges against Andrew Johnson were motivated by partisan politics and that removing Johnson on any one of the charges would have set a dangerous precedent. In effect Congressional Republicans were trying to use impeachment as a political

tool to overcome Johnson's repeated attempts to impede their legislative efforts. However, the Founding Fathers, by devising a constitutional system of checks and balances in which the three co-equal branches of government are each delegated certain specific, enumerated authority, tried to prevent any one branch from acquiring too much power and wielding it in a despotic fashion. Had Congress been successful in removing Johnson, impeachment might have become a favored political weapon against future U.S. presidents, thereby severely weakening the presidency and removing any incentive for the House and Senate to cooperate and compromise with the EXECUTIVE BRANCH.

Many scholars and historians have also concluded that the Johnson impeachment proceedings helped narrow the class of impeachable offenses. The U.S. Constitution provides that the "President ... of the United States, shall be removed from Office on Impeachment for ... high Crimes and Misdemeanors," but fails to define what those terms mean. U.S. Const. art. II § 4. The Johnson impeachment proceedings, in the minds of many observers, have come to stand for the proposition that before an offense may be deemed an impeachable offense it must not only constitute a crime but the crime itself must be of a serious or grave nature. However, this precedent only advanced the discussion so far, as it failed to determine how serious or grave the criminal activity must be for it to be considered an impeachable offense, a question that recurred throughout the impeachment proceedings against WILLIAM JEFFERSON CLINTON, who was acquitted by the Senate on charges that he committed the crimes of PERJURY and OBSTRUCTION OF JUSTICE to conceal his relationship with former White House intern Monica Lewinsky.

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Assassination; Civil Rights Acts; Ex Post Facto Laws; Lincoln, Abraham; Stanton, Edwin McMasters; Tenure of Office Act; Veto.

v JOHNSON, FRANK MINIS, JR.

As a federal judge in Alabama during the tumultuous CIVIL RIGHTS era, Frank Minis Johnson Jr. earned an outstanding reputation. Serving on the U.S. district court for the Middle District of Alabama (1955–79) and the U.S. COURTS OF APPEALS for the Fifth and Eleventh Circuits (1979–91), Johnson was a strong, if sometimes cautious, defender of constitutional liberties for all U.S. citizens, regardless of race or social status.

Johnson was one of only a few judges to apply vigorously the U.S. Supreme Court's SCHOOL DESEGREGATION decision in BROWN V. BOARD OF EDUCATION, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954). He made history in 1956 when he and another judge overturned a Montgomery, Alabama, ordinance requiring segregation on city buses (*Browder v. Gayle,* 142 F. Supp. 707 [M.D. Ala.]). That decision gave the nascent CIVIL RIGHTS MOVEMENT an encouraging victory and helped catapult MARTIN LUTHER KING Jr., who had led a boycott of Montgomery buses, to the forefront as a civil rights leader. During the 1970s Johnson issued court orders requiring sweeping changes in Alabama's mental health institutions and prisons. Although his judicial decisions brought death threats to himself and his family from whites who opposed integration, Johnson remained faithful to his convictions regarding individual rights.

THE SELMA-TO-MONTGOMERY MARCH ... DEMONSTRATED SOMETHING ABOUT DEMOCRACY: THAT IT CAN NEVER BE TAKEN FOR GRANTED; [IT] ALSO SHOWED THAT THERE IS A WAY IN THIS SYSTEM TO GAIN HUMAN RIGHTS.
—FRANK M. JOHNSON

Johnson was born October 30, 1918, in Delmar, a town in northern Alabama's Winston County. The county, in which Johnson spent his youth, was a Republican stronghold in an overwhelmingly Democratic state; in fact, it had attempted to remain neutral during the Civil War. Johnson's father, Frank Minis Johnson Sr. served as one of the few Republicans in the Alabama state legislature. Johnson studied law at the University of Alabama and graduated in

Frank M. Johnson.
AP IMAGES

the top of his class in 1943 with a bachelor of laws degree. He gained admission to the Alabama bar the following year.

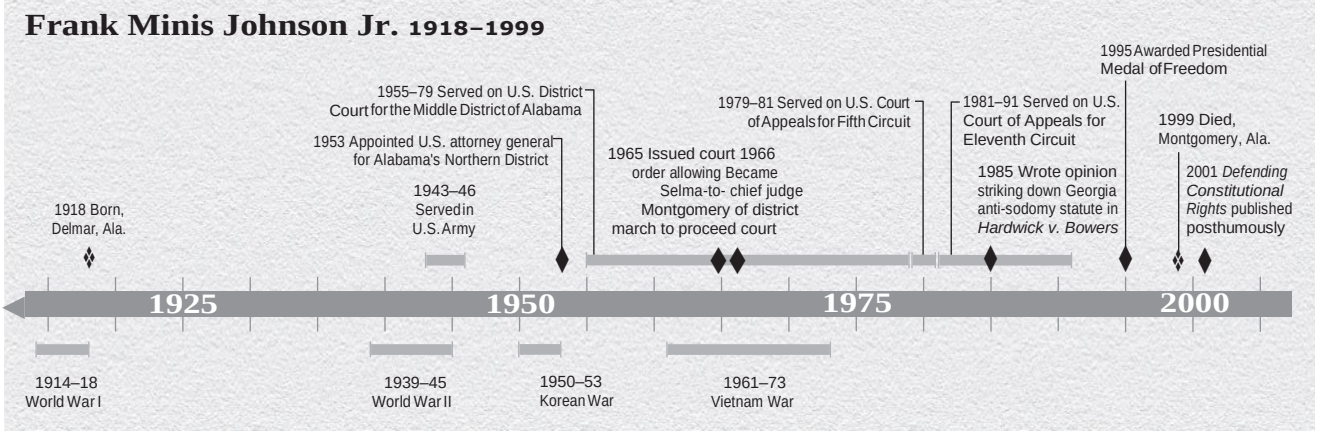
Johnson distinguished himself during WORLD WAR II while serving as an officer in the U.S. Army. Wounded in the Normandy Invasion, he received numerous decorations, including the Purple Heart with Oak Leaf Cluster and the Bronze Star. He left the military in 1946 and returned to Alabama. Settling in Jasper, he cofounded a law firm and quickly earned a reputation as an outstanding defense lawyer.

In 1952 Johnson worked as a state manager for the presidential campaign of Republican DWIGHT D. EISENHOWER. After Eisenhower became president the following year, he rewarded Johnson with the post of U.S. attorney for Alabama's Northern District. In 1955, Eisenhower named Johnson to the U.S. District Court for Alabama's Middle District. At age 37, Johnson was the country's youngest federal judge. He became the court's chief judge in 1966.

In 1956, shortly after taking his seat on the bench, Johnson became involved in a formative event of the civil rights movement. A year earlier an African American woman named ROSA PARKS had been arrested for violating a Montgomery ordinance requiring racial segregation on the city's buses. In response the African American community organized a boycott of the Montgomery bus system and nominated King as its leader. In addition, the National Association for the Advancement of Colored People (NAACP) challenged the city ordinance in court and eventually appealed the case to the federal district court (*Browder*). Citing the U.S. Supreme Court's reasoning in *Brown,* Johnson and Judge Richard T. Rives, members of a three-judge panel, ruled that the Montgomery ordinance violated the Due Process and EQUAL PROTECTION Clauses of the FOURTEENTH AMENDMENT.

The ruling was the first of many by Johnson, either alone or as part of a three-judge panel, that eliminated racial segregation in public accommodations such as parks, libraries, bus stations, and airports during the 1950s and 1960s. In many instances, Johnson's decisions were the first of their kind, earning him a national reputation as a staunch defender of civil rights.

Johnson's rulings in support of integration often put him at odds with GEORGE WALLACE, a former law school classmate who served four



terms as Alabama's governor (1963–67, 1971–75, 1975–79, and 1983–87). Wallace and the state of Alabama actively opposed the desegregation decrees issued by the federal courts. In response Johnson pioneered the use of injunctions (court orders) to force the desegregation of public schools and to monitor compliance with court orders. Wallace and Johnson also clashed in 1965 over King's Selma-to-Montgomery march for civil rights. After Wallace stopped the march, Johnson issued a court order allowing it to proceed. The march was later credited with sparking passage of the VOTING RIGHTS ACT OF 1965 (42 U.S.C.A. § 1971). Because of the sweeping effect of his judicial decisions on Alabama society, Johnson was sometimes called the "real" governor of Alabama.

Soon after the Selma march, Johnson tried a celebrated case involving the MURDER of VIOLA LIUZZO, a white civil rights worker who had been shot to death while riding in her car with an African American. After an all-white jury acquitted three KU KLUX KLAN members of the murder in state court, a federal case against the men was brought in Johnson's court. Johnson skillfully maneuvered to avoid a deadlocked jury, and the trial resulted in the conviction of the Klan members for violation of the woman's civil rights.

Johnson's rulings on voting rights cleared the way for African Americans to vote on an equal basis with whites. In several decisions during the 1960s, Johnson developed the "freeze" doctrine, by which African Americans were allowed to vote as long as their qualifications matched those of the least qualified white. The doctrine was later incorporated into the Voting Rights Act. In addition, Johnson outlawed the POLL TAX and issued the first court order requiring equitable apportionment of legislative seats. Johnson also struck down a state law barring blacks and women from juries, required that court-appointed lawyers be paid, ordered significant changes in Alabama's property tax system, and desegregated the state trooper force.

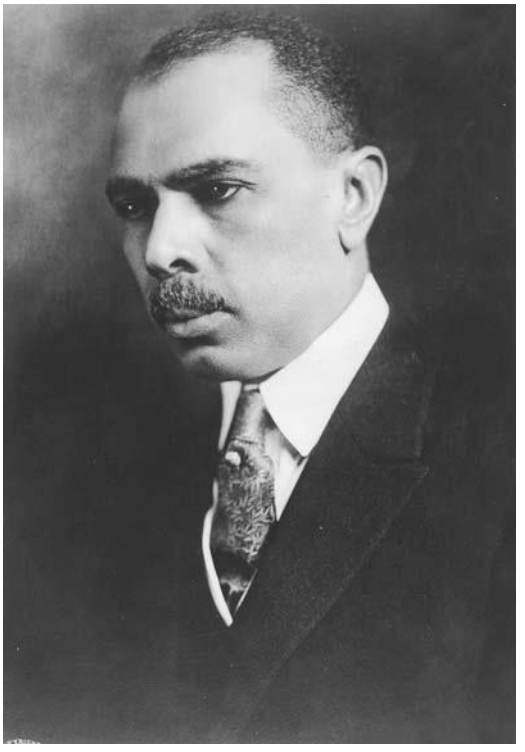
Johnson's pro–civil rights decisions made him many enemies. Opponents burned crosses on the lawn of his Montgomery home, firebombed his mother's house, and sent hate mail by the bagful. Many leading Montgomery residents ostracized Johnson and his family.

After the civil rights era came to an end in the late 1960s, Johnson continued to issue decisions that had a broad and reforming effect on Alabama society. Just as he had done with school desegregation, Johnson used the judicial injunction as an instrument of social reform. He issued injunctions to remedy inhumane conditions in mental hospitals (*Wyatt v. Stickney,* 334 F. Supp. 1341 [M.D. Ala. 1971]) and prisons (*Newman v. Alabama,* 349 F. Supp. 278 [M.D. Ala. 1972]; *Pugh v. Locke,* 406 F. Supp. 318 [M.D. Ala. 1976]). In both of these instances, Johnson established a human rights committee to implement and monitor his orders.

In 1977 President JIMMY CARTER named Johnson director of the FEDERAL BUREAU OF INVESTIGATION, but a heart condition prevented Johnson from taking the job. Surgery improved Johnson's health, and he remained on the federal bench. In 1979 Carter appointed Johnson to the U.S. Court of Appeals for the Fifth Judicial Circuit; in 1981 redistricting made him part of the Eleventh Circuit. In one notable case from his tenure on the Eleventh CIRCUIT COURT, *Hardwick v. Bowers,* 760 F.2d 1202 (11th Cir. 1985), Johnson wrote an opinion declaring that a Georgia SODOMY statute (Georgia Code. Ann. § 16-6-2 [1984]) violated constitutional rights. The U.S. Supreme Court reversed the decision (*Bowers v. Hardwick,* 478 U.S. 186, 106 S. Ct. 2841, 92 L. Ed. 2d 140 [1986]).

Johnson retired to senior status on the Eleventh Circuit in 1991. He received many honors and awards, including honorary doctorates of law from Notre Dame, Princeton, Alabama, Boston, Yale, Mercer, and the Tuskegee Institute. He also received the THURGOOD MARSHALL Award. In 1992 the government renamed the federal courthouse in Montgomery the FRANK M. JOHNSON Jr. Federal Building and U.S. Courthouse. And in 1995 President BILL CLINTON awarded Johnson the Presidential Medal of Freedom, the nation's highest civilian honor. In presenting the award, Clinton noted Johnson's "landmark decisions in the areas of desegregation, voting rights, and civil liberties."

In 1984 Johnson was awarded the Devitt Distinguished Service to Justice Award, which is administered by the American JUDICATURE Society. This award is named for Edward J. Devitt, a former chief U.S. district judge for Minnesota. It acknowledges the dedication and contributions to justice made by all federal judges, by recognizing the specific achievements of one judge who has contributed significantly to the



James Weldon Johnson.
LIBRARY OF CONGRESS

profession. Johnson died on July 23, 1999, in Montgomery.

CROSS REFERENCES

Gay and Lesbian Rights; Separate But Equal.

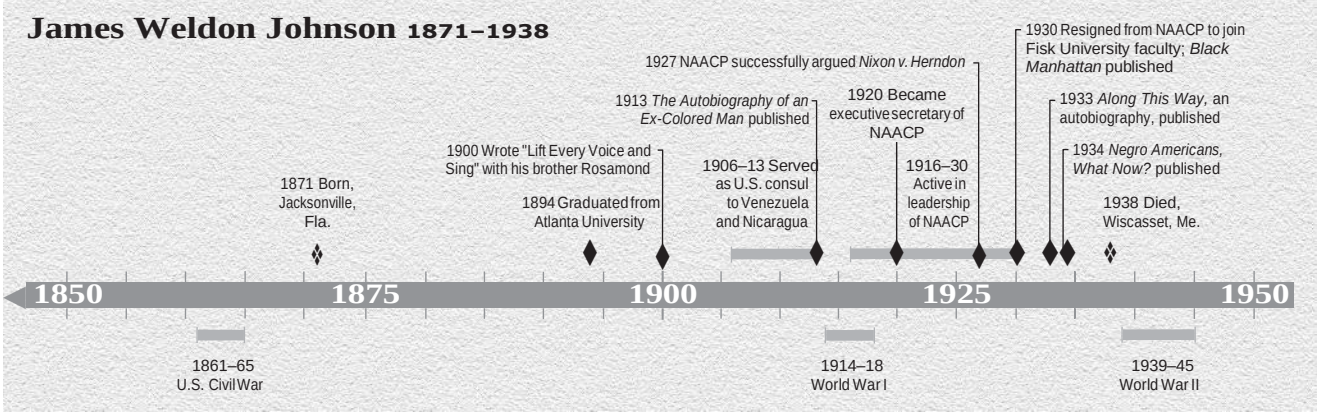
v JOHNSON, JAMES WELDON

James Weldon Johnson was a key figure in the National Association for the Advancement of Colored People (NAACP) between 1916 and 1930, and helped transform that organization into the leading African American CIVIL RIGHTS advocacy group in the United States. Johnson's efforts as NAACP field secretary greatly increased the number of NAACP branches and members, and his work as executive secretary during the 1920s expanded the association's lobbying, litigation, fund-raising, and publicity campaigns. Johnson was also a highly accomplished writer and played a vital role in the African American literary movement known as the Harlem Renaissance.

Johnson was born June 17, 1871, in Jacksonville, Florida. His parents, James Johnson and Helen Louise Dillette Johnson, encouraged his pursuit of education, and he graduated from Atlanta University in 1894. He then took a job as principal at the Stanton School in Jacksonville, where he established a high school program.

He studied law with a white lawyer in his spare time, and in 1898 was admitted to the Florida bar. He also wrote lyrics for songs composed by his brother, J. Rosamond Johnson. In 1900 the two wrote the song "Lift Every Voice and Sing," which later became known as the "Negro National Anthem." The two brothers moved to New York in 1902 and went on to become a highly successful songwriting team.

Johnson became involved in New York politics. In 1904 he became treasurer of the city's Colored Republican Club, helping with the campaign to reelect THEODORE ROOSEVELT to the presidency. On the recommendation of W. E. B. Du Bois, an African American scholar and civil rights leader, Johnson was named U.S. consul to Puerto Cabello, Venezuela, in 1906. Two years later he was appointed consul to Corinto, Nicaragua. He remained in that position until 1913, when he resigned. Johnson



believed that the election of WOODROW WILSON, a Democrat, to the presidency, as well as significant racial prejudice, would interfere with his advancement in the consular service. In 1910 he married Grace Nail. The couple had no children.

Johnson returned to New York and in 1914 became an editorialist and columnist at the *New York Age* newspaper. Two years later he was offered a position as field secretary for the NAACP, which was founded in 1909 to improve the situation of African Americans. In that office Johnson traveled widely and did much to help the NAACP grow from 9,000 members in 1916 to 90,000 in 1920. Under Johnson's direction the number of branches multiplied rapidly as well. In the South, where NAACP activity had been weak, the number of branches increased from 3 to 131. Johnson also spoke widely on the subject of racial discrimination, and he organized NAACP protests. In 1917 he coordinated a silent march in New York to protest LYNCHING of African Americans and other forms of racial oppression. Throughout his tenure at the NAACP, he remained committed to keeping it an interracial organization, seeking the membership and aid of whites as well as blacks.

By 1920 Johnson had risen to executive secretary of the NAACP, the organization's highest leadership position. Under his guidance the NAACP publicized the continued lynching of African Americans, which the organization estimated had caused the death of 3,000 people between 1889 and 1919. Johnson directed the NAACP's support of the 1921 Dyer antilynching bill (which did not become law), LABOR UNION movements, and policies to improve living and working conditions for African Americans. In addition, Johnson issued an influential report on the U.S. occupation of Haiti occurring at that time. Furthermore, Johnson was a highly successful fund-raiser.

Johnson's leadership greatly increased the NAACP's influence on U.S. law. He helped expand the organization's campaigns to end laws and practices that segregated African Americans and denied them basic freedoms such as the right to vote. Under Johnson's leadership the NAACP successfully argued *Nixon v. Herndon,* 273 U.S. 536, 47 S. Ct. 446, 71 L. Ed. 759 (1927), before the Supreme Court. The decision held that a whites-only DEMOCRATIC PARTY primary in Texas was unconstitutional, and marked a significant step toward establishing equal voting rights for African Americans.

In 1930 Johnson resigned from the NAACP to become a professor of creative literature and writing at Fisk University, in Nashville. Johnson's writings include *The Autobiography of an Ex-Colored Man* (1913), a novel; three volumes of poetry; *Black Manhattan* (1930), a history of African Americans in New York; *Along This Way* (1933), an autobiography; and *Negro Americans, What Now?* (1934), a treatise on the situation of African Americans. He edited three influential anthologies: *The Book of American Negro Poetry* (1922), *The Book of American Negro Spirituals* (1925), and *The Second Book of American Negro Spirituals* (1926), the last two with his brother.

Johnson received much recognition during his lifetime, including honorary degrees from Atlanta University and Howard University and the NAACP's Spingarn Medal (1925). He was killed in a car accident in Wiscasset, Maine, on June 26, 1938.

THE DWARFING, WARPING, DISTORTING INFLUENCE WHICH OPERATES UPON EACH AND EVERY COLOURED MAN IN THE UNITED STATES ... FORCES [HIM] TO TAKE HIS OUTLOOK ON ALL THINGS, NOT FROM THE VIEW-POINT OF A CITIZEN, OR MAN, OR EVEN A HUMAN BEING, BUT FROM THE VIEW-POINT OF A COLOURED MAN.
—JAMES WELDON JOHNSON

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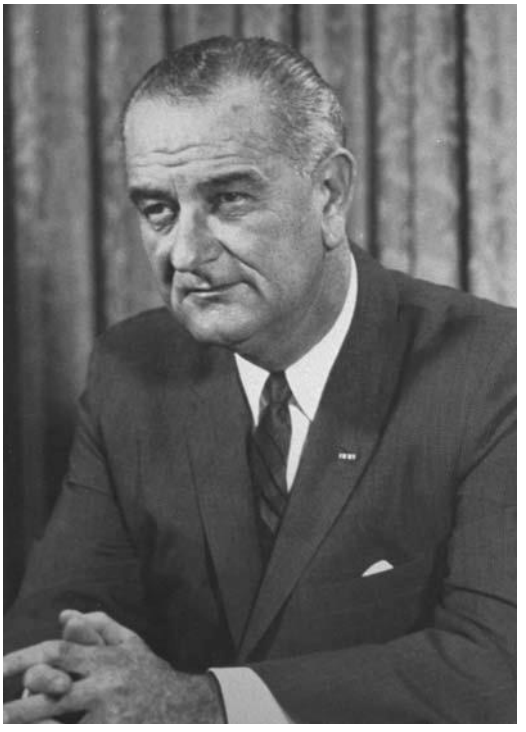
v JOHNSON, LYNDON BAINES

Lyndon Baines Johnson was the 36th PRESIDENT OF THE UNITED STATES, serving from 1963 to 1969. Like three other vice presidents in U.S. history, he assumed the office following the ASSASSINATION of the president. He took office November 22, 1963, after JOHN F. KENNEDY was killed in Dallas. Johnson's administration was marked by landmark changes in CIVIL RIGHTS laws and social welfare programs, yet political support for him collapsed because of his escalation of the VIETNAM WAR.

Johnson was born August 27, 1908, near Stonewall, Texas. He was raised in Johnson City, Texas, which was named for his grandfather, who had served in the Texas Legislature. Johnson's father, Sam Ealy Johnson, also served in the Texas Legislature. Johnson graduated from Southwest Texas State Teachers College in 1930 with a teaching degree. He taught high school in



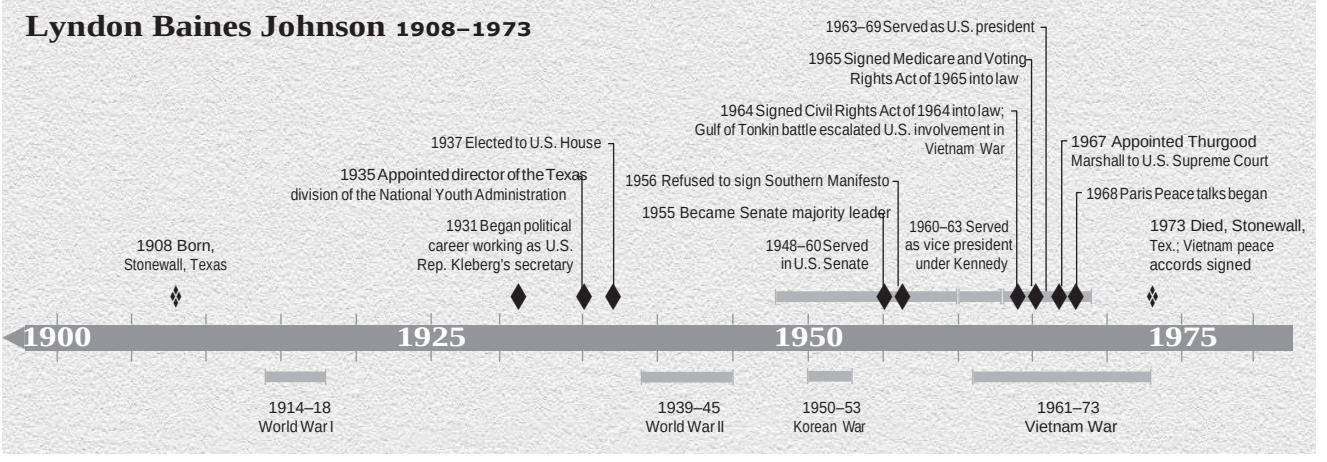
Lyndon B. Johnson.
LIBRARY OF CONGRESS

Houston, until 1931, when he became involved with Democrat Richard M. Kleberg's campaign for the U.S. House of Representatives. Johnson gave speeches and spoke to voters on Kleberg's behalf. When Kleberg was elected, he asked Johnson to accompany him to Washington, D.C., as his secretary. Johnson agreed, and his political career in Washington, D.C., was launched.

Johnson was not satisfied to be a secretary to a congressman. He began making friends with powerful Democrats, most notably Representative Sam Rayburn, of Texas. Rayburn, who would soon become Speaker of the House, had enormous influence. In 1935, after President FRANKLIN D. ROOSEVELT named him director of the Texas division of the National Youth Administration, Johnson used his connections to put twelve thousand young people to work in public service jobs and to help another eighteen thousand go to college.

He quit this position in 1937 to run in a special election for the U.S. House of Representatives in Texas's Tenth Congressional District. In his campaign he supported Roosevelt's policies, which came under heavy attack by Johnson's opponents. After Johnson was elected, Roosevelt made a point of getting to know him. Soon the two developed a long and lasting friendship.

Johnson remained in the House of Representatives until 1948, though he did spend a brief period in the Navy during WORLD WAR II. He ran for the U.S. Senate in 1941, and lost to Governor W. Lee O'Daniel by fewer than 1,400 votes. He ran again in 1948, this time against Coke R. Stevenson, a former Texas governor. Johnson won the 1948 Democratic primary election by 87 votes, but Stevenson claimed that election fraud had allowed Johnson supporters to stuff the ballot box with votes from dead or fictitious persons. A federal district court judge ordered Johnson's name removed from the final election ballot pending an investigation of the fraud charges. Johnson enlisted a group of prominent Washington, D.C., attorneys, led by ABE FORTAS, to overturn the order. The attorneys convinced Justice HUGO L. BLACK, of the U.S. Supreme Court, to reverse the order. With his name back on the ballot, Johnson went on to an easy victory.



Johnson moved quickly to gain power and influence in the Senate. Senator Richard B. Russell, of Georgia, became his mentor in the same way Sam Rayburn had been in the 1930s. In 1951 Johnson became the Democratic whip, which required that he maintain party discipline and encourage the attendance of Democratic senators. Two years later he was elected minority leader, at age 44 the youngest member ever elected to that position. In 1955, after the Democrats took control of the Senate, he assumed the position of majority leader, the most powerful position in that body.

As majority leader Johnson worked at developing consensus with members from both parties. During this period he became famous for the "LBJ treatment," where he would use clever stratagems and steady persuasion to win reluctant colleagues over to his side. He developed a bipartisan approach with the administration of Republican president DWIGHT D. EISENHOWER and sought common ground. He sustained a setback in 1955 when he suffered a heart attack, but returned to government service later that year.

Johnson wanted to be president, and he knew that opposing civil rights would destroy his chances on a national level. He was one of three Southern senators who refused to sign the Southern Manifesto, a 1956 document that urged the South to resist with all legal methods the Supreme Court's decision outlawing racially segregated schools in BROWN V. BOARD OF EDUCATION, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954). In 1957 he put through the Senate the first civil rights bill in more than 80 years.

Senator John F. Kennedy, of Massachusetts, won the Democratic presidential nomination in 1960 and named Johnson his vice presidential running mate. Johnson helped Kennedy in the southern states, and Kennedy won a narrow victory over vice president RICHARD M. NIXON.

As vice president under Kennedy, Johnson performed numerous diplomatic missions and presided over the National AERONAUTICS and Space Council and the President's Committee on Equal Employment Opportunities. When Kennedy was assassinated in 1963, Johnson took the oath of office in Dallas. In the months that followed, he concentrated on passing the slain president's legislative agenda. He proposed a war-on-poverty program, helped pass a tax cut, and oversaw the enactment of the landmark Civil Rights Act of 1964 (42 U.S.C.A. § 2000a et seq.). This act outlawed racial and other types of discrimination in employment, education, and public accommodations. Civil rights for all persons was one part of Johnson's vision of what he called the GREAT SOCIETY.

Johnson easily defeated conservative Republican senator BARRY M. GOLDWATER in the 1964 presidential election. Under his administration Congress in 1965 enacted the MEDICARE bill (42 U.S.C.A. § 1395 et seq.), which provided free supplementary health care for older persons as part of their SOCIAL SECURITY benefits. Johnson also obtained large increases in federal aid to education; established the Departments of Transportation and of Housing and Urban Development; and proposed the VOTING RIGHTS ACT OF 1965 (42 U.S.C.A. § 1971 et seq.), which ensured protection against racially discriminatory voting practices that had disenfranchised nonwhites. This act changed the South, as it allowed African Americans to register to vote for the first time since Reconstruction. Finally, Johnson appointed to the U.S. Supreme Court THURGOOD MARSHALL, the first African American to sit on the High Court.

POVERTY HAS MANY ROOTS, BUT THE TAP ROOT IS IGNORANCE.
—LYNDON B. JOHNSON

International affairs did not go as smoothly for Johnson, especially regarding Vietnam. Kennedy had sent U.S. advisers to help South Vietnam repel what the government characterized as a Communist insurgency that was supported by North Vietnam. Johnson did not wish to abandon the South Vietnamese government, and soon his administration began escalating U.S. involvement. In August 1964 Johnson announced that North Vietnamese ships had attacked U.S. naval vessels in the Gulf of Tonkin. Johnson asked Congress for the authority to employ any necessary course of action to safeguard U.S. troops. Based on what turned out to be inaccurate information supplied by the Johnson administration, Congress gave the president this authority in its Gulf of Tonkin Resolution (78 Stat. 384).

Following his reelection in 1964, Johnson used this resolution to justify military escalation. In February 1965 he authorized the bombing of North Vietnam. To continue the protection of the South Vietnamese government, Johnson increased the number of U.S. soldiers fighting in South Vietnam from 20,000 to 500,000 during the next three years.

As the war escalated, so did antiwar sentiments, especially among college students, many of

whom were subject to military CONSCRIPTION. As casualties mounted, antiwar demonstrations increased and support in Congress decreased. The strategy of escalation did not produce the victory military leaders predicted.

The cost of funding a war ended Johnson's Great Society initiatives. More important, the Vietnam War became the focal point for the nation. Johnson's popularity plummeted, and the nation was torn by conflict over the unpopular war. On March 31, 1968, Johnson announced he would not seek reelection. He spent the remainder of his term attempting to convince the South and North Vietnamese to begin a peace process. By the end of his administration, the Paris peace talks were started, which began a long negotiating process between North and South Vietnam.

Johnson left office in January 1969 and returned to his ranch near Johnson City. There he wrote an account of his years in office, *The Vantage Point: Perspectives of the Presidency* (1971). His health deteriorated. Johnson died of a heart attack at his ranch, on January 22, 1973, less than one week before the signing of the accords that ended the Vietnam War.

THE CONSTITUTION ... ANNOUNCES A GREAT PRINCIPLE OF AMERICAN LIBERTY, ... THAT AS BETWEEN A MAN AND HIS CONSCIENCE, AS RELATES TO HIS OBLIGATIONS TO GOD, IT IS NOT ONLY TYRANNICAL BUT UNCHRISTIAN TO INTERFERE.
—REVERDY JOHNSON

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Vietnam War; "Voting Rights Act Address" (Appendix, Primary Document).

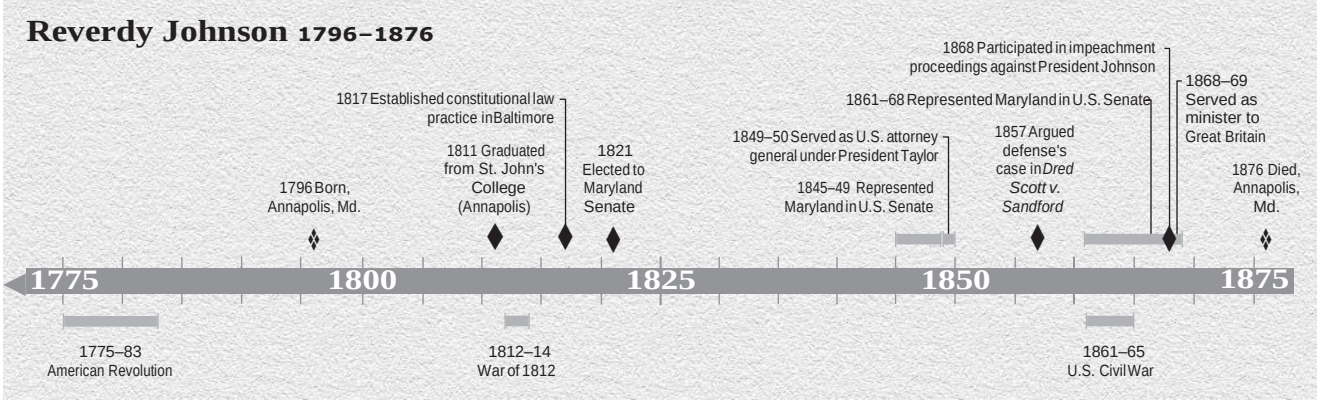
v JOHNSON, REVERDY

Reverdy Johnson served as U.S. attorney general from 1849 to 1850. Johnson also served in the U.S. Senate and was an influential constitutional lawyer. He represented the defense in DRED SCOTT V. SANDFORD, 60 (19 How.) U.S. 393, 15 L. Ed. 691 (1857).

Johnson was born May 21, 1796, in Annapolis, Maryland. He graduated from St. John's College, in Annapolis, in 1811 and was admitted to the Maryland bar in 1815. After establishing a law practice in Upper Marlboro, Maryland, Johnson relocated to Baltimore in 1817 and opened a new firm that specialized in CONSTITUTIONAL LAW.

After his relocation Johnson became interested in politics and government service. He was deputy attorney general of Maryland before being elected to the Maryland Senate in 1821. In 1845 he was elected to the U.S. Senate, then resigned in 1849 to serve as U.S. attorney general in the administration of President ZACHARY TAYLOR.

Johnson's talents in constitutional law were demonstrated in the *DRED SCOTT* case. Dred Scott was an African American slave from Missouri who had been transported to Minnesota, then a "free" (non-slaveholding) territory. Scott sued for his freedom, arguing that he was no longer a slave because he had resided in a free territory. Missouri law had established the principle "once free, always free." John F. A. Sandford, who controlled Scott, objected to the trial court's declaration that Scott was free. The Missouri Supreme Court agreed with Sandford and overturned the once-free, always-free doctrine. Scott appealed to the U.S. Supreme Court.



When the case reached the U.S. Supreme Court, Scott's lawyer framed it as a suit for Scott's freedom. Johnson, one of several lawyers representing Sandford, injected into the proceeding several new issues that transformed the case into a debate over the constitutionality of SLAVERY. Johnson argued that Scott had no right to sue in federal court, raising the issue of a black person's claim to be a U.S. citizen. Johnson also attacked the constitutionality of the 1820 Missouri Compromise, which gave Congress the power to forbid slavery in the territories. Johnson claimed that slaves were private property protected by the Constitution, and therefore Congress could not abolish slavery in the territories. These arguments transformed the issue from whether Scott could be returned to slavery to whether Scott had ever been free at all.

The Supreme Court adopted most of Johnson's arguments. Chief Justice Roger B. Taney's majority opinion concluded that at the time of the ratification of the Constitution, there were no African American citizens in the United States. Therefore, the Framers never contemplated that African Americans could be federal citizens. In practical terms Scott's lack of citizenship meant he could not sue in federal court. In addition, the Court ruled that the Missouri Compromise was unconstitutional.

The *Dred Scott* case helped precipitate the secession of southern states and the Civil War, yet Johnson supported the Union during the war. He waged a successful campaign to prevent Maryland from seceding, before returning to the U.S. Senate in 1861.

After the Civil War, Johnson was the lone Democratic member of the U.S. Senate to support the ideas of the Radical Republicans' Reconstruction policy. He was a member of the Reconstruction committee and of a joint congressional committee that looked into these issues.

In 1868, as a member of the Senate Rules Committee, Johnson participated in impeachment proceedings against President ANDREW JOHNSON. He was strongly in favor of a VERDICT of ACQUITTAL, which occurred by the slimmest of margins.

Johnson entered the foreign service in 1868 as a minister to Great Britain. In 1869 he returned to his law practice. He spent much of his later years defending southerners charged with disloyalty to the federal government. He successfully argued that the FOURTEENTH AMENDMENT applied only to illegal acts committed by the government, not to acts committed by private citizens, including vigilantes.

Johnson died February 10, 1876, in Annapolis, Maryland.

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Dred Scott v. Sandford.

v JOHNSON, THOMAS

THOMAS JOHNSON was the first governor of Maryland. He served in the Maryland House of Delegates in the early 1780s and was chief judge of the Maryland General Court from 1790 to 1791. Johnson was appointed to the U.S. Supreme Court in 1791, where he served a brief and uneventful term before resigning because of poor health.

Johnson was born November 4, 1732, to Thomas Johnson and Dorcas Sedgwick Johnson, in Calvert County, Maryland. Johnson was one of twelve children, and he received no formal education as a child. His parents sent him to Annapolis, Maryland, to work as a registry clerk at the land office under Thomas Jennings. Following his apprenticeship, Johnson began to study law in the office of Stephen Bordley, an Annapolis attorney. He was admitted to the bar in 1760, and practiced law before entering politics.

In 1766 Johnson married Ann Jennings, the daughter of his former instructor at the Annapolis land office. They were married for 28 years, until Ann died. They had eight children.

From 1762 to 1773 Johnson was a member of the Maryland colonial assembly. In 1765 he became famous for his strong opposition to the STAMP ACT, which was the first tax imposed on the colonists by Great Britain. Johnson was named a delegate to the Maryland convention in 1774, and a Maryland representative to the First CONTINENTAL CONGRESS, in Philadelphia. He also served on a committee that drafted a

AMERICA[NS] WISH ... TO PRESERVE THE CONSTITUTIONAL LIBERTY ... HANDED DOWN TO US BY OUR ANCESTORS. IF OUR PETITION IS REJECTED BY ... OUR FRIENDS IN ENGLAND, WILL NOT OUR VERY MODERATE MEN ON THIS SIDE OF THE WATER BE COMPELLED TO OWN THE NECESSITY OF OPPOSING FORCE BY FORCE?
—THOMAS JOHNSON

Thomas Johnson. ETCHING BY ALBERT ROSENTHAL. COLLECTION OF THE SUPREME COURT OF THE UNITED STATES

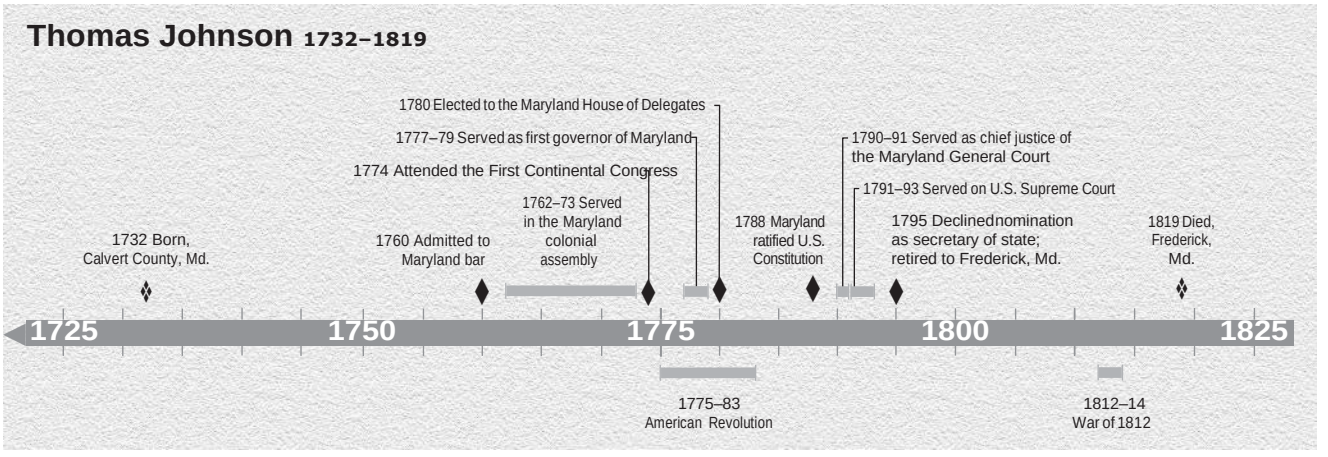
petition of grievances to King George III. Johnson formally nominated GEORGE WASHINGTON before the Continental Congress in 1775 for the position of commander in chief of the Continental Army.

Johnson supported the DECLARATION OF INDEPENDENCE, although he was not present in Philadelphia on the day it was signed. He voted for Maryland's independence on July 6, 1776, and contributed to the new state constitution that year. During the American Revolution, he served in the Maryland MILITIA as first brigadier general. In 1777 Johnson led nearly two thousand men from Frederick, Maryland, to General Washington's headquarters in New Jersey. Also in 1777 Johnson was elected the first governor of Maryland, from which position he was able to provide crucial assistance in keeping Washington's army peopled and equipped. Johnson continued to serve as Maryland's governor until 1779, when he declined a fourth term. He entered the Maryland House of Delegates in 1780.

Johnson also pursued interests outside of politics. In 1785 he helped organize the state-chartered Potomac Company. This company grew from Johnson's idea to improve navigation along the Potomac River and open a passageway to the West Coast. Johnson began the company with the help of his good friend Washington, who served as president of the company. In the end the enterprise proved unprofitable.

In 1788 Johnson supported ratification of the U.S. Constitution at the Maryland Constitutional Convention. From 1790 to 1791, he served as chief judge of the Maryland General Court. In 1791 President Washington nominated him to the U.S. Supreme Court.

Johnson was hesitant to serve on the Supreme Court because at that time each justice was responsible for riding CIRCUIT COURT duties. Chief Justice JOHN JAY assured Johnson that every effort would be made to relieve the rigors of the circuit court duty, but Johnson was assigned to the Southern Circuit, which included all the territory south of the Potomac. Johnson sought a reassignment. When Jay refused to accommodate that request, Johnson resigned, citing poor health. He had served as an associate justice for just over one year. During his brief and uneventful Supreme Court tenure, he had authored only one opinion.



Johnson continued his public service, becoming a member of the board of commissioners of the federal city, appointed by President Washington to plan a new national capital on the Potomac. That commission voted to name the new city Washington and selected a design submitted by Pierre L'Enfant. Johnson was present in September 1793 when the cornerstone for the new Capitol was laid.

President Washington nominated Johnson to serve as secretary of state in 1795, but Johnson declined. Instead Johnson retired to Frederick, Maryland, where he died October 26, 1819.

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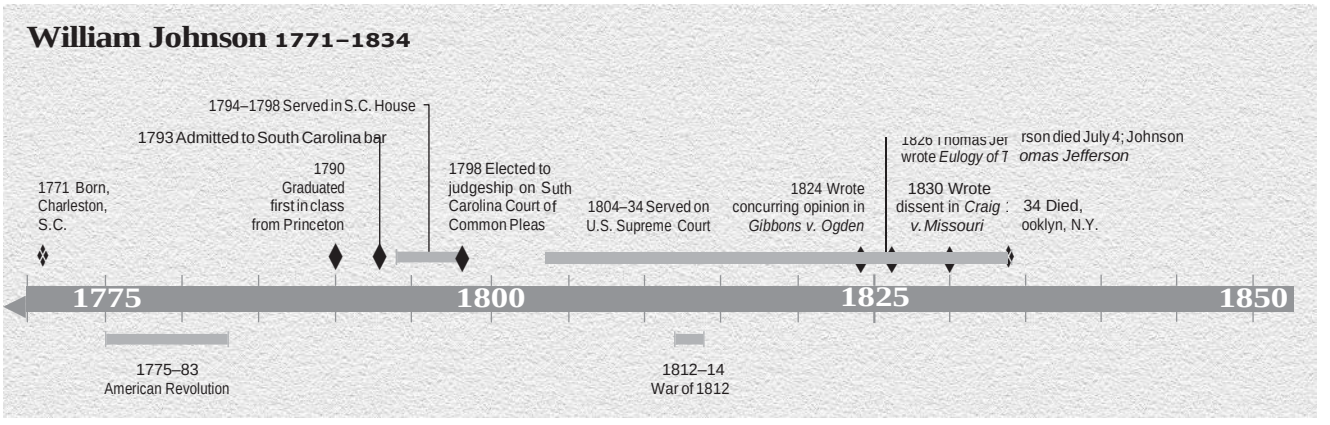
v JOHNSON, WILLIAM

WILLIAM JOHNSON served in the South Carolina House of Representatives from 1794 to 1798 and as speaker of the house in 1798. He was then elected judge of the South Carolina Court of COMMON PLEAS. In 1804 he was appointed to the U.S. Supreme Court. He served on the U.S. Supreme Court until his death in 1834, earning a reputation as a critic of Chief Justice JOHN MARSHALL, a writer of dissenting opinions, and a nationalist with regard to federal-state relations.

Johnson was born December 27, 1771, in Charleston, South Carolina. He was the son of Sarah Nightingale Johnson and of William Johnson, a blacksmith, legislator, and well-known Revolutionary patriot. During the Revolutionary War, when the British captured Charleston, Johnson's father was sent to detention in Florida, and the family was exiled from its home. The Johnsons returned to South Carolina after being reunited months later.

William Johnson.
GETTY IMAGES

Johnson graduated first in his class from Princeton in 1790. He then returned to Charleston to study law under Charles C. Pinckney, a prominent adviser to President GEORGE WASHINGTON. Johnson was admitted to the bar in 1793.



In 1794 Johnson married Sarah Bennett, sister of Thomas Bennett, a future governor of South Carolina. The couple had eight children, six of whom died in childhood. They also later adopted two refugee children from Santo Domingo.

From 1794 to 1798 Johnson served in South Carolina's house of representatives as a member of Thomas Jefferson's new REPUBLICAN PARTY. Johnson was speaker of the house in 1798. He was then elected judge of the court of common pleas, the state's highest court.

In 1804 President Jefferson appointed Johnson to the U.S. Supreme Court. During his thirty years of service on the Court, Johnson became known as a critic of Chief Justice John Marshall. Johnson has been called the first great Court dissenter because he established a tradition of dissenting opinions. Among his most noteworthy opinions was his dissent in *Craig v. Missouri,* 29 U.S. (4 Pet.) 410, 7 L. Ed. 903 (1830). In *Craig v. Missouri,* Johnson argued in his dissent that states should be able to issue temporary BILLS OF CREDIT or loans.

IN A COUNTRY WHERE LAWS GOVERN, COURTS OF JUSTICE NECESSARILY ARE THE MEDIUM OF ACTION AND REACTION BETWEEN THE GOVERNMENT AND THE GOVERNED.
—WILLIAM JOHNSON

In general, Johnson leaned toward the nationalist position in judicial issues involving federal-state relations, as illustrated by his concurring opinion in GIBBONS V. OGDEN, 22 U.S. (9 Wheat.) 1, 6 L. Ed. 23 (1824). *Gibbons* was a landmark decision that held that the COMMERCE CLAUSE gave to Congress, to the exclusion of the states, the power to regulate interstate commerce, which included navigation between the states. In his CIRCUIT COURT duties as well, Johnson steadfastly held that the federal government had the right to control interstate commerce, including the commerce of slaves. This position proved so unpopular in his native state that he was forced to move to Pennsylvania in 1833.

In the first part of his career as a Supreme Court justice, Johnson sought a different appointment. He wrote to President Jefferson that he found the Court to be no "bed of roses." Nevertheless, he remained on the Court until his death.

Johnson's other accomplishments included the publication of *Sketches of the Life and Correspondence of Nathaniel Greene,* in 1822, and *Eulogy of Thomas Jefferson,* in 1826. Johnson also was a founder of the University of South Carolina. He died following surgery in 1834.

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JOINDER

The union in one lawsuit of multiple parties who have the same rights or against whom rights are claimed as coplaintiffs or codefendants. The combination in one lawsuit of two or more causes of action, or grounds for relief. At common law the acceptance by opposing parties that a particular issue is in dispute.

Joinder of Parties

For two or more persons to join together as coplaintiffs or codefendants in a lawsuit, they generally must share similar rights or liabilities. At COMMON LAW a person could not be added as a PLAINTIFF unless that person, jointly with the other plaintiffs, was entitled to the whole recovery. A person could not be added as a DEFENDANT unless that person, jointly with the other defendants, was liable for the entire demand. To be more efficient, reduce costs, and reduce litigation, the modern practice of law does not proceed on the same principles.

Permissive Joinder According to modern law, a person who has no material interest in the subject of the litigation or in the relief demanded is not a proper party and may not be part of the legal action. A proper party is one who may be joined in the action but whose failure to do so does not prevent the court from hearing the case and settling the controversy. A proper party may be added to a lawsuit through a process called permissive joinder.

The statutes that govern permissive joinder generally provide that plaintiffs may unite in one action if they claim a right to relief for injuries arising from the same occurrence or transaction. Likewise, persons may join as defendants in an action if assertions made against them claim a right to relief for damages emerging from the same transaction or occurrence.

Compulsory Joinder If a court is being asked to decide the rights of a person who is not named as a party to the lawsuit, that party must be joined in the lawsuit or else the court may

not hear the case. Such persons are deemed indispensable or necessary parties, and they may be added as parties to the lawsuit through a process termed compulsory joinder. For reasons of equity and convenience, it is often best for the court not to proceed if an INDISPENSABLE PARTY is absent and cannot be joined. In some circumstances, however, a court may still hear a matter if an indispensable party is absent, but its judgment can affect only the interests of the parties before it.

To determine whether a person is an indispensable party, the court must carefully examine the facts of the case, the relief sought, and the nature and extent of the absent person's interest in the controversy raised in the lawsuit. The Federal Rules of CIVIL PROCEDURE and many state rules give courts flexible guidelines for this determination. These rules provide that the court should look to various pragmatic factors and determine whether it is better to dismiss the action owing to the absence of a party, or to proceed without that party. Specifically, the court should consider whether complete relief could still be accorded the parties who are present, whether the absence of the particular party impairs that party's ability to protect an interest, or whether the absence will leave a party that is present subject to a substantial risk of incurring multiple obligations. If the court decides, based on principles of equity and good conscience, that it is best to dismiss the action rather than hear it without the absent party joining the lawsuit, then the absent party is an indispensable party and the case is said to be dismissed for nonjoinder. For example, if one party to a contract asks the court to determine his rights under the contract, and the other party to the contract is absent and cannot be joined, then the court will refuse to hear the case because the other party is indispensable to determining rights under the contract.

Joinder of Action

Under certain circumstances a plaintiff may join several causes of action, or claims for relief, in one complaint, declaration, or petition, even though each could have been the basis for a separate lawsuit. This procedure is not the same as the common one in which a plaintiff relies on more than one theory of recovery or mode of redress to correct a single wrong.

To determine if the plaintiff is joining separate causes of action, as opposed to merely pursuing more than one means of redress, some courts look to whether the plaintiff is seeking to enforce more than one distinct primary right or whether the complaint addresses more than one subject of controversy. Other courts look to whether the claims emanate from a single occurrence or transaction. If the court's inquiry shows that a plaintiff is attempting to join several causes of action into one lawsuit, the court must look to the applicable court rules and statutes to determine if such a joining is permissible.

Modern statutes and rules of practice governing joinder of causes of action vary by jurisdiction. In general, however, they are liberal and encourage joinder when it promotes efficiency in the justice system. For example, the Federal Rules of Civil Procedure provide that a plaintiff may join in one suit as many claims as she or he has against an opposing party. Some state rules are similarly broad. Many states provide that the court, on its own motion or on the motion of a party, may consolidate similarly related cases.

Joinder is not always favored by modern rules of court and statutes. Some statutes will not permit the joinder of causes of action that require different places of trial. Also, the various joinder statutes generally provide that inconsistent causes of action—that is, ones that disprove or defeat each other—cannot be joined in the same lawsuit. For example, a plaintiff may not in a single suit rely on a contract as valid and also treat the same contract as rescinded. However, contract and tort actions may be combined in one suit when they arise out of the same occurrence or transaction and are not inconsistent.

Misjoinder Misjoinder is an objection that may be made when a plaintiff joins separate causes of action that cannot be joined according to the applicable law. Some states require the plaintiff to decide which of the misjoined claims he or she wants to pursue. Other states allow the court to sever the misjoined claims into separate actions.

Joinder of Issue

At common law joinder of issue occurs when one party pleads that an allegation is true and the opposing party denies it, such that both parties are accepting that the particular issue is in dispute.

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CROSS REFERENCE

Civil Procedure.

JOINT

United; coupled together in interest; shared between two or more persons; not solitary in interest or action but acting together or in unison. A combined, undivided effort or undertaking involving two or more individuals. Produced by or involving the concurring action of two or more; united in or possessing a common relation, action, or interest. To share common rights, duties, and liabilities.

JOINT AND SEVERAL LIABILITY

A designation of liability by which members of a group are either individually or mutually responsible to a party in whose favor a judgment has been awarded.

Joint and several liability is a form of liability that is used in civil cases where two or more people are found liable for damages. The winning PLAINTIFF in such a case may collect the entire judgment from any one of the parties, or from any and all of the parties in various amounts until the judgment is paid in full. In other words, if any of the defendants do not have enough money or assets to pay an equal share of the award, the other defendants must make up the difference.

Defendants in a civil suit can be held jointly and severally liable only if their concurrent acts brought about the harm to the plaintiff. The acts of the defendants do not have to be simultaneous: they must simply contribute to the same event. For example, assume that an electrician negligently installs an electrical line. Years later, another electrician inspects the line and approves it. When the plaintiff is subsequently injured by a short circuit in the line, the plaintiff may sue both electricians and hold them jointly and severally liable.

Joint and several liability can also arise where a husband and wife or members of an organization owe the government income taxes. In such cases, the revenue agency may collect on the debt from any and all of the debtors. In a contractual situation, where two or more persons are responsible for the same performance and default on their obligations, a nondefaulting party may hold any and all parties liable for damages resulting from the breach of performance.

A small number of states do not strictly follow the doctrine of joint and several liability. In such jurisdictions, called comparative NEGLIGENCE jurisdictions, liability is prorated according to the percentage of the total damages attributable to each defendant's conduct.

JOINT ESTATE

Property owned by two or more people at the same time, under the same title, with the same interest, and with the same right of possession.

Although *joint estate* is sometimes used interchangeably with *JOINT TENANCY,* the two terms are not synonymous. *Joint estate* denotes a broad category of ownership that includes joint tenancy, TENANCY IN COMMON, and TENANCY BY THE ENTIRETY. A more apt synonym for *joint estate* is *concurrent estate,* which depicts the simultaneous ownership of property by more than one person.

Joint Tenancy

Joint tenants acquire the same interest in the same property through the same CONVEYANCE, commencing at the same time, and each holds the property under the same individual possession. Each owner possesses the entire property by the appropriate designated fraction as well as by the whole, and has the right to enjoy both the fraction and the whole, but shares that right with all other joint tenants. A joint tenancy is created through a simple and straightforward process—for example, through a deed or will.

The principal difference between joint tenancy and other forms of co-ownership is that upon the death of a joint tenant, the surviving tenants have the right to the sole ownership of the property. This right, known as the RIGHT OF SURVIVORSHIP, exists without regard to the relationship between the tenants. In other words, two people who are not related in any way can be joint tenants, and either will, upon the death of the other, possess all of the deceased's rights of ownership in that parcel of property. The property does not become part of the decedent's

estate, and the disposition of the property cannot be changed by will. When one joint tenant dies, the remaining tenants take an increased share of the property, and this process continues until the last survivor owns the entire parcel. That survivor then ceases to be a joint tenant and may do with the property what she wishes, as its sole owner.

Joint tenancy has enjoyed great popularity because it provides a simple mechanism for holding title to property without that title having to pass through probate. The cumbersome nature of certain probate proceedings and the cost and time that they entail provide ample motivation for many people to seek a joint tenancy arrangement. Joint tenancy is often used by a husband and wife who wish, for example, to have their HOMESTEAD remain under the sole ownership of the surviving spouse when one dies. The property becomes part of a probated estate only when the second spouse dies.

Four UNITIES are necessary for the establishment of a joint tenancy: time, title, interest, and possession. This means that the interests of the joint owners must come into existence at the same time and by the same conveying document, the interests of all tenants must be identical, and each tenant must have an equal right to enjoy the property. Formerly, if any of these unities did not exist or ceased to exist, a joint tenancy was disallowed or extinguished, and a tenancy in common was created. In the early 2000s, courts tend not to examine the technical existence of the four unities in considering a joint tenancy case. Where it was the clear intention of the parties to create a joint tenancy and where the requirements have generally been met, most courts will find that a joint tenancy exists.

It is still a well-accepted principle of the unities that if a joint tenant conveys his interest in a property to a THIRD PARTY, the third party becomes a tenant in common, while the remaining tenant continues as a joint tenant but no longer enjoys the right of survivorship. The right of survivorship is lost whether or not the conveyor seeks its loss. Thus, because any joint tenant has the INALIENABLE right to sever the joint tenancy by conveying her property to another party, the existence of a joint tenancy is not a complete protection of the right of survivorship. Other problems may arise owing to the joint tenants' inability to control the distribution of the property through a will. In addition, a federal gift tax may be imposed if the joint tenancy was created primarily from the funds of only one joint tenant.

Many states have tended to favor tenancies in common over joint tenancies because a joint tenant may not clearly understand that the property goes to the surviving tenants. Courts differ on the language required to create a joint tenancy. Where a desire to create a joint tenancy is not clearly expressed, courts will often find in favor of a tenancy in common rather than a joint tenancy.

Tenancy in Common

Tenancy in common provides ownership of an undivided interest of the whole but not of the whole itself. It bestows no right of survivorship, and the interest of the tenant in common is freely ALIENABLE and will pass to the heirs of the tenant upon the tenant's death. When a sole owner dies without having specified the disposition of the property, the heirs will inherit as tenants in common.

Tenancy by the Entirety

Tenancy by the entirety is similar to joint tenancy in providing the right of survivorship and requiring the four unities. But it is a more restricted type of joint estate that may exist only between a husband and a wife. Each spouse owns the undivided whole of the property so that upon the death of one spouse, the surviving spouse is entitled to the decedent's full share. Neither spouse can voluntarily dispose of his interest in the property, and the tenancy can be created only by will or by deed.

If a conveyance specified a tenancy by the entirety but the grantees were other than husband and wife, some courts have declared that a joint tenancy resulted, whereas others have found a tenancy in common.

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JOINT OPERATING AGREEMENT

Any contract, agreement, joint venture, or other arrangement entered into by two or more businesses

in which the operations and the physical facilities of a failing business are merged, although each business retains its status as a separate entity in terms of profits and individual mission.

The purpose of a joint operating agreement (JOA) is to protect a business from failure, yet prevent monopolization within an industry by allowing each party to retain some form of separate operation. JOAs are used in the newspaper, health care, gas and oil, and other industries.

JOAs have been questioned as providing a means of avoiding antitrust problems. With *International Shoe Co. v. FTC,* 280 U.S. 291, 50 S. Ct. 89, 74 L. Ed. 431 (1930), the Supreme Court created the "failing-company" defense, by which mergers that would ordinarily violate antitrust laws are permitted where one of the businesses faces certain failure if no other action is taken. It was argued that a MERGER between two competitors, one of which is failing, cannot adversely affect competition because, either way, the failing company will disappear as a competitive entity.

In the newspaper business, JOAs are used so that a failing newspaper can be paired with a parent newspaper and still retain separate editorial and reporting functions. In 1965 the JUSTICE DEPARTMENT questioned the legality of JOAs by issuing charges of antitrust violations to two publishers of daily newspapers operated under a JOA in Tucson, Arizona. In *Citizens Publishing Co. v. United States,* 394 U.S. 131, 89 S. Ct. 927, 22 L. Ed. 2d 148 (1969), even though the newspapers used the failing-company defense, the Supreme Court upheld findings of antitrust violations. Its decision narrowed the scope of the failing-company defense. The Court set three strict conditions for claiming failing-company IMMUNITY: (1) the failing company must be about to liquidate, and the JOA must be its last chance to survive; (2) the acquiring company must be the only available purchaser; and (3) reorganization prospects in BANKRUPTCY must be dim or nonexistent.

Congress responded to *Citizens Publishing* by passing the Newspaper Preservation Act (NPA) (15 U.S.C.A. § 1802 et seq.) in 1970. The NPA lets newspapers form a JOA if they pass a less strict test. Under the NPA the attorney general may grant limited exemption from antitrust laws by approving a JOA.

In the health care industry, hospitals may form a JOA to provide a stronger financial structure. The JOA, also known in this industry as a virtual merger, allows the hospitals to retain separate boards of directors but turns over management to a separate company. The hospitals coordinate services, construction needs, and the purchase of major equipment, yet maintain some of their own policies. Religious hospitals gain the benefits of a hospital network and still retain their religious affiliation. For example, a Catholic hospital entering into a JOA can maintain its stand against ABORTION and continue its individual programs for treating people who are poor.

Two or more gas and oil operators can enter into a JOA to share the risk and expense of gas and oil exploration. One party is given responsibility for day-to-day operations, often charging back expenses to the other participants in the JOA. The operator is able to keep costs down, and the other participants still retain rights to their share of the gas and oil, which they can use at their own discretion. The parties are seldom considered to be in a partnership unless the agreement specifically states that they are.

In all JOAs the parties retain some aspect of their original organization, whether it is editorial voice, religious affiliation, mission statement, or the ability to use the resources of the business as they choose. All the parties share in the financial risks of the joint operation and gain the potential for an increased market presence and thus increased profits.

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CROSS REFERENCES

Mergers and Acquisitions; Monopoly.

JOINT RESOLUTION

A type of measure that Congress may consider and act upon, the other types being bills, concurrent resolutions, and simple resolutions, in addition to treaties in the Senate.

Like a bill, a joint resolution must be approved, in identical form, by both the House and the Senate, and signed by the president. Like a bill, it has the force of law if approved.

A joint resolution is distinguished from a bill by the circumstances in which it is generally used. Although no rules stipulate whether a proposed law must be drafted as a bill or a joint resolution, certain traditions are generally followed. A joint resolution is often used when Congress needs to pass legislation to solve a limited or temporary problem. For example, it is used as a temporary measure to provide continuing appropriations for government programs when annual appropriations bills have not yet been enacted. This type of joint resolution is called a continuing resolution.

Joint resolutions are also often used to address a single important issue. For example, between 1955 and January 1991, on six occasions Congress passed joint resolutions authorizing or approving presidential requests to use armed forces to defend specific foreign countries, such as Taiwan, or to protect U.S. interests in specific regions, such as the Middle East. Two of these resolutions—the TONKIN GULF RESOLUTION of 1964 (78 Stat. 384) and the Persian Gulf Resolution of 1991 (105 Stat. 3)—were used, in part, to justify U.S. participation in a full-scale war.

Another use of joint resolutions is to propose amendments to the U.S. Constitution. Resolutions proposing constitutional amendments must be approved by two-thirds of both houses. They do not require the president's signature, but instead become law when they are ratified by three-fourths of the states.

Finally, joint resolutions are commonly used to establish commemorative days. Of the 99 joint resolutions that became law in the 103d Congress, for example, 83 were items of commemorative legislation.

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CROSS REFERENCE

Congress of the United States.

JOINT STOCK COMPANY

An association engaged in a business for profit with ownership interests represented by shares of stock.

A joint stock company is financed with capital invested by the members or stockholders who receive transferable shares, or stock. It is under the control of certain selected managers called directors.

A joint stock company is a form of partnership, possessing the element of personal liability where each member remains financially responsible for the acts of the company. It is not a legal entity separate from its stockholders.

A joint stock company differs from a partnership in that the latter is composed of a few persons brought together by shared confidence. Partners are not free to retire from the firm or to substitute other persons in their place without prior assent of all the partners. A partner's death causes the dissolution of the firm.

In contrast, a joint stock company consists of a large number of stockholders who are unacquainted with each other. A change in membership or a transfer of stock has no effect on the continued existence of the company and the death of a stockholder does not result in its dissolution. Unlike partners in a partnership, a stockholder in a joint stock company has no agency relationship to the company or any of its members.

A joint stock company is similar to a corporation in that both are characterized by perpetual succession where a member is allowed to freely transfer stock and introduce a stranger in the membership. The transfer has no effect on the continuation of the organization since both a joint stock company and a corporation act through a central management, board of directors, trustees, or governors. Individual stockholders have no authority to act on behalf of the company or its members.

Anxious investors wait for news about the South Sea Company, a joint stock company formed in London in 1711. Joint stock companies are a form of partnership in which each member, or stockholder, is financially responsible for acts of the company.
LIBRARY OF CONGRESS

A joint stock company differs from a corporation in certain respects. A corporation exists under a state charter, while a joint stock company is formed by an agreement among the members. The existence of a joint stock company is based upon the right of individuals to contract with each other and, unlike a corporation, does not require a grant of authority from the state before it can organize.

Whereas members of a corporation are generally not held liable for debts of a corporation, the members of a joint stock company are held liable as partners. In a legal action, a corporation sues and is sued in its corporate name, but a joint stock company sues and defends in the name of a designated officer.

JOINT TENANCY

A type of ownership of real or personal property by two or more persons in which each owns an undivided interest in the whole.

In estate law, joint tenancy is a special form of ownership by two or more persons of the same property. The individuals, who are called joint tenants, share equal ownership of the property and have the equal, undivided right to keep or dispose of the property. Joint tenancy creates a RIGHT OF SURVIVORSHIP. This right provides that if any one of the joint tenants dies, the remainder of the property is transferred to the survivors. Descended from common-law tradition, joint tenancy is closely related to two other forms of concurrent property ownership: TENANCY IN COMMON, a less restrictive form of ownership that sometimes results when joint tenancies cease to exist, and TENANCY BY THE ENTIRETY, a special form of joint tenancy for married couples.

Joint tenants usually share ownership of land, but the property may instead be money or other items. Four main features mark this type of ownership: (1) The joint tenants own an undivided interest in the property as a whole; each share is equal, and no one joint tenant can

ever have a larger share. (2) The estates of the joint tenants are vested (meaning fixed and unalterable by any condition) for exactly the same period of time—in this case, the tenants' lifetime. (3) The joint tenants hold their property under the same title. (4) The joint tenants all enjoy the same rights until one of them dies. Under the right of survivorship, the death of one joint tenant automatically transfers the remainder of the property in equal parts to the survivors. When only one joint tenant is left alive, he or she receives the entire estate.

If the joint tenants mutually agree to sell the property, they must equally divide the proceeds of the sale. Because disagreement over the disposition of property is common, courts sometimes intervene to divide the property equally among the owners. If one joint tenant decides to convey her or his interest in the property to a new owner, the joint tenancy is broken and the new owner has a tenancy in common.

Tenancy in common is a form of concurrent ownership that can be created by deed, will, or OPERATION OF LAW. Several features distinguish it from joint tenancy: A tenant in common may have a larger share of property than the other tenants. The tenant is also free to dispose of his or her share without the restrictive conditions placed on a joint tenancy. Unlike joint tenancy, tenancy in common has no right of survivorship. Thus, no other tenant in common is entitled to receive a share of the property upon a tenant in common's death; instead, the property goes to the deceased's heirs.

Tenancy by the entirety is a form of joint tenancy that is available only to a husband and wife. It can be created only by will or by deed. As a form of joint tenancy that also creates a right of survivorship, it allows the property to pass automatically to the surviving spouse when a spouse dies. In addition, tenancy by the entirety protects a spouse's interest in the property from the other spouse's creditors. It differs from joint tenancy in one major respect: Neither party can voluntarily dispose of her or his interest in the property. In the event of divorce, the tenancy by the entirety becomes a tenancy in common, and the right of survivorship is lost.

CROSS REFERENCE

Real Property.

JOINT TORTFEASOR

Two or more individuals with joint and several liability in a tort action for the same injury to the same person or property.

To be considered joint tortfeasors, the parties must act together in committing the wrong, or their acts, if independent of each other, must unite in causing a single injury. All who actively participate in the commission of a civil wrong are joint tortfeasors. Persons responsible for separate acts of NEGLIGENCE that combine in causing an injury are joint tortfeasors. The PLAINTIFF has the option of suing one or more of the tortfeasors, either individually or as a group.

If the plaintiff is awarded damages, each JOINT TORTFEASOR is responsible for paying a portion of the damages, based on the percentage of the injury caused by his or her negligent act. The DEFENDANT who pays more than his or her share of the damages, or who pays more than he or she is at fault for, may bring an action to recover from the other culpable defendants under the principle of contribution.

JOINT VENTURE

An association of two or more individuals or companies engaged in a solitary business enterprise for profit without actual partnership or incorporation; also called a joint adventure.

A joint venture is a contractual business undertaking between two or more parties. It is similar to a business partnership, with one key difference: a partnership generally involves an ongoing, long-term business relationship, whereas a joint venture is based on a single business transaction. Individuals or companies choose to enter joint ventures in order to share strengths, minimize risks, and increase competitive advantages in the marketplace. Joint ventures can be distinct business units (a new business entity may be created for the joint venture) or collaborations between businesses. In a collaboration, for example, a high-technology firm may contract with a manufacturer to bring its idea for a product to market; the former provides the know-how, the latter the means.

All joint ventures are initiated by the parties' entering a contract or an agreement that specifies their mutual responsibilities and goals. The contract is crucial for avoiding trouble later; the parties must be specific about the intent of their joint venture as well as aware of

its limitations. All joint ventures also involve certain rights and duties. The parties have a mutual right to control the enterprise, a right to share in the profits, and a duty to share in any losses incurred. Each joint venturer has a FIDUCIARY responsibility, owes a standard of care to the other members, and has the duty to act in GOOD FAITH in matters that concern the common interest or the enterprise. A *fiduciary responsibility* is a duty to act for someone else's benefit while subordinating one's personal interests to those of the other person. A joint venture can terminate at a time specified in the contract, upon the accomplishment of its purpose, upon the death of an active member, or if a court decides that serious disagreements between the members make its continuation impractical.

Joint ventures have existed for centuries. In the United States, their use began with the railroads in the late 1800s. Throughout the middle part of the twentieth century they were common in the manufacturing sector. By the late 1980s, joint ventures increasingly appeared in the service industries as businesses looked for new, competitive strategies. This expansion of joint ventures was particularly interesting to regulators and lawmakers.

The chief concern with joint ventures is that they can restrict competition, especially when they are formed by businesses that are otherwise competitors or potential competitors. Another concern is that joint ventures can reduce the entry of others into a given market. Regulators in the JUSTICE DEPARTMENT and the FEDERAL TRADE COMMISSION routinely evaluate joint ventures for violations of ANTITRUST LAW; in addition, injured private parties may bring antitrust suits.

In 1982 Congress amended the SHERMAN ANTI-TRUST ACT of 1890 (15 U.S.C.A. § 6a)—the statutory basis of antitrust law—to ease restrictions on joint ventures that involve exports. At the same time, it passed the Export Trading Company Act (U.S.C.A. § 4013) to grant exporters limited immunity to antitrust prosecution. Two years later the National Cooperative Research Act of 1984 (Pub. L. No. 98-462) permitted venturers involved in joint research and development to notify the government of their joint venture and thus limit their liability in the event of prosecution for antitrust violations. This protection against liability was expanded in 1993 to include some joint ventures involving production (Pub. L. No. 103-42).

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JONES ACT

Enacted in 1920 (46 U.S.C.A. § 688), the JONES ACT provides a remedy to sailors for injuries or death resulting from the NEGLIGENCE of an owner, a master, or a fellow sailor of a vessel. The federal Jones Act defines the legal rights of seamen who are injured or killed in the course of maritime service. It entitles them, or their survivors, to sue their employer in the event that their fellow workers or shipmasters are negligent (unreasonably careless), and to receive a trial by jury. Prior to the law's passage, sailors did not enjoy these rights, largely because of antiquated legal concepts and court opinions that tended to protect employers. A milestone in liability law, the Jones Act was intended to demolish such barriers in recognition of the special risks taken by sailors. Interpreting the law has been a long and difficult challenge for the federal courts, which have exclusive jurisdiction over Jones Act claims. The crux of the problem is the Jones Act's failure to define the term *seaman,* which courts have generally, but not always, construed to mean "a shipmaster or crew member."

Until the early twentieth century, the rights of sailors were limited. If a sailor was injured through the negligence of another sailor or the master of the ship, the injured party could not hope to win a suit against the employer. Nor could survivors of a sailor who died in the line of service win such a suit. Under general maritime law, sailors were entitled to "maintenance and cure"—a form of contractual compensation that provided a living allowance for food, lodging, and medical expenses. Only when a ship was proved to be unseaworthy could sailors recover damages from their employer.

The U.S. Supreme Court emphasized these limitations in 1903 in *The Osceola,* 189 U.S. 158, 23 S. Ct. 483, 47 L. Ed. 760. In that case the Court ruled that the owner of a ship was not responsible for a sailor's injuries simply because those injuries were caused by the negligent order of the ship's master. The decision had its roots in a common-law doctrine known as the FELLOW-SERVANT RULE. This now outdated concept shifted blame partly, and sometimes entirely, from employers to fellow workers. If sued because a worker was injured on the job, employers could avert liability by blaming the accident on the negligence of fellow employees. In *Osceola* the Court based its reasoning on a so-called fellow-seaman doctrine, thus curtailing the legal remedies available to an injured sailor.

Several historical developments motivated Congress to give sailors greater legal rights. The sinking of the *Titanic* in 1912 heightened public awareness of the perils of service at sea, and it was soon followed by concerns about merchant marines at the onset of WORLD WAR I. In 1915 Congress enacted safety requirements for vessels through the Act to Promote the Welfare of American Seamen in the Merchant Marine of the United States (Act of March 4, 1915, ch. 153, 38 Stat. 1164). This act overruled the Supreme Court's decision in *Osceola,* explicitly stating that the fellow-seaman doctrine could not be used as a defense. But the law had little force. In 1918 the Court ruled that Congress had failed to provide a remedy for negligent acts, and therefore allowed a lower court's dismissal of a sailor's negligence suit to stand (*Chelentis v. Luckenbach Steamship Co.,* 247 U.S. 372, 38 S. Ct. 501, 62 L. Ed. 1171). Federal lawmakers viewed the decision as undermining their will.

Two years later Congress responded by passing the Merchant Marine Act of 1920 (46 App. U.S.C.A. § 861 et seq.), section 33 of which has come to be known as the Jones Act. Lawmakers defined the rights of sailors to sue in explicit language:

> Any seaman who shall suffer PERSONAL INJURY in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury.... and in case of the death of any seaman as a result of any such personal injury the PERSONAL REPRESENTATIVE of such seaman may maintain an action for damages at law with the right of trial by jury.

Though Congress had eliminated the barriers that the Supreme Court had erected, a key question remained: Who qualified as a seaman? In 1927 Congress provided a partial answer through the passage of the Longshoremen's and Harbor Workers Compensation Act (LHCA) (33 U.S.C.A. § 901 et seq.). The LHCA provided workers' compensation benefits to dockhands, who by that time had replaced sailors in the tasks of loading and unloading ships. But the LHCA specifically excluded any crew member of a vessel from its coverage; thus, by extension, sailors were not eligible for the benefits afforded dockworkers.

Because Congress did not see a need in 1920 to define *seaman,* it remained ambiguous who qualified to bring a suit under the Jones Act. Nevertheless, the courts had little trouble deciding until 1940, when the Supreme Court ruled that a crew member was not a seaman if his duties did not pertain to navigation (*South Chicago Coal & Dock Co. v. Bassett,* 309 U.S. 251, 60 S. Ct. 544, 84 L. Ed. 732). Yet, over the next several decades, some courts liberally construed both who constituted a sailor and what constituted a vessel. More confusion followed as a result of the Supreme Court's 1955 decision in *Gianfala v. Texas Co.,* 350 U.S. 879, 76 S. Ct. 141, 100 L. Ed. 775, which reinstated the district court's ruling that the determination of a sailor's status belonged to the jury. The definition of *seaman* came to include workers on dredges and floating oil drilling platforms. Still, no precise test existed, and the result was an explosion of Jones Act litigation. Between 1975 and 1985, nearly one hundred thousand Jones Act suits were filed in southern states.

During the 1980s critics of the Jones Act called for reform. They asked Congress to limit the act's scope, and the Supreme Court to define whom the act covered. Although Congress did not act, the Court returned a partial answer in 1995 in *Chandris, Inc. v. Latsis,* 515 U.S. 347, 115 S. Ct. 2172, 132 L. Ed. 2d 314. The decision established two elements that must be met by a PLAINTIFF in order for the plaintiff to qualify as a sailor: the worker's duties "must contribute to the function of the vessel or to the accomplishment of its mission," and the worker "must have a connection to a vessel in navigation (or an identifiable group of vessels) that is substantial in both its duration and its nature." One key result of the decision was that sailors could

now sue under the Jones Act even if their work required going ashore. But scholars did not believe *Chandris* was a conclusive ruling on all matters of interpretation in the law.

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v JONES, ELAINE RUTH

A leading African American attorney, ELAINE RUTH JONES has devoted her career to the cause of CIVIL RIGHTS. From 1993 to 2004, she served as director-counsel of the NAACP LEGAL DEFENSE AND EDUCATIONAL FUND (LDF). Known for her eloquence and tenacity as well as for her creative approach to the cause of civil rights, Jones heads the LDF's 80-member staff while frequently speaking out on legal, social, and political issues.

When Jones was born on March 2, 1944, in Norfolk, Virginia, opportunities for blacks in her birthplace were limited. Her father was a Pullman porter who had been taught to read by her college-educated mother. Jones, her brother, and her parents felt the sting of being turned away from whites-only facilities. Yet the family believed in success through hard work and especially in education. Jones graduated third in her class from BOOKER T. WASHINGTON High School, in Norfolk, in 1961, and then attended Howard University, from which she graduated cum laude with a political science degree in 1965.

Jones served in the Peace Corps in Turkey between 1965 and 1967. She returned to the United States determined to pursue social change through the law. Particularly inspiring to her was the career of THURGOOD MARSHALL, founder of the LDF and later a U.S. Supreme Court justice. In 1970 she became the first black woman to graduate from the University of Virginia Law School. Jones's distinction in law school earned her a lucrative offer from the New York-based law firm of Nixon, Mudge, Rose, Guthrie, and Alexander, at that time the firm that represented President RICHARD M. NIXON. At the last minute, she chose not to accept the offer; she wanted to pursue Marshall's work.

Jones joined the LDF as an attorney. As the NAACP's litigation and public education arm, the LDF provides legal assistance to African Americans and has brought more cases before the U.S. Supreme Court than any other legal body except the solicitor general's office. Assigned to death-penalty cases, Jones represented numerous black defendants in state and federal court. Only two years into her career, she worked on the landmark U.S. Supreme Court case *Furman v. Georgia*, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (1972), in which the Court struck down death penalty statutes in 39 states after finding that the death penalty violated the cruel and unusual punishments clause of the EIGHTH AMENDMENT. The ruling held up hundreds of executions until states could rewrite their laws.

Starting in 1975, Jones spent two years working for the federal government. As a special assistant to the U.S. secretary of transportation, she helped to formulate official policies on a broad range of transportation issues. Among other accomplishments, she helped to open the doors of the U.S. Coast Guard to women. But she longed to return to her former job at the LDF. "Once you get started doing civil rights work, it is hard to put it aside and move on to something else," she said. "I believe that is because there is still so much injustice. You see it everywhere and you want to do everything possible to stop it."

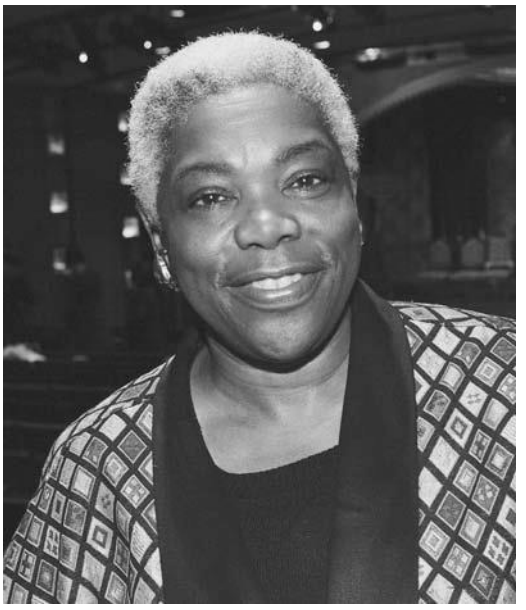
Jones returned to the LDF in 1977 to work in its Washington, D.C., office as an assistant counsel. She again litigated CIVIL RIGHTS CASES, but the new position also required her to review government actions and policies. She monitored civil rights enforcement activities of executive branch agencies and legislative initiatives of Congress. In 1988 she became deputy director and counsel for policy and planning, devoting herself to determining new areas in which the LDF could pursue its civil rights agenda. In 1989 Jones became the first African American to be elected to the American Bar Association's Board of Governors.

WE FIND IT EMOTIONAL, WE FIND IT UNCOMFORTABLE, WE FIND IT HARD AS A NATION TO HAVE A CALM, RATIONAL DISCUSSION ABOUT THE IMPACT OF RACE ON INSTITUTIONS IN OUR SOCIETY.
—ELAINE JONES

These positions gave Jones a political education that broadened her public visibility and her view of the LDF mission. When an opening for the organization's highest position, director-counsel, appeared in 1993, she was the board of directors' obvious choice. "[She] was precisely the kind of person whom Justice Marshall no doubt envisioned to take up the leadership position," commented LDF president Robert H. Preiskel. "Elaine shared a good many of the characteristics that made him such a powerful leader."

Jones soon began pursuing a broader agenda for the LDF. She identified new civil rights issues, including environmental disparities as evidenced by the dumping of toxic waste in minority communities and the presence of dangerous lead-based paint in buildings in which black families lived and the need for health care reform. She also used the LDF public-education function to address traditional issues, advocating continued support for AFFIRMATIVE ACTION programs and opposing racial inequity in death-penalty cases. Jones supported the Racial Justice Act (H.R. 3315, 103d Cong., 2d Sess. [1994] §§ 601–611), legislation—ultimately stripped from President BILL CLINTON'S 1994 crime bill—that would have prohibited executions that fit a racially discriminatory pattern. In 1994, she received the Washington Bar Association's prestigious CHARLES HAMILTON HOUSTON Medallion of Merit, an award given to leaders who use the law for social change. In 2000, President Clinton presented her with the Eleanor Roosevelt HUMAN RIGHTS Award.

In 2004, after 11 years as president and director/counsel for the LDF, Jones announced her resignation. She said that while she would no longer run the LDF, she would continue to litigate for it as needed.



Elaine Jones.
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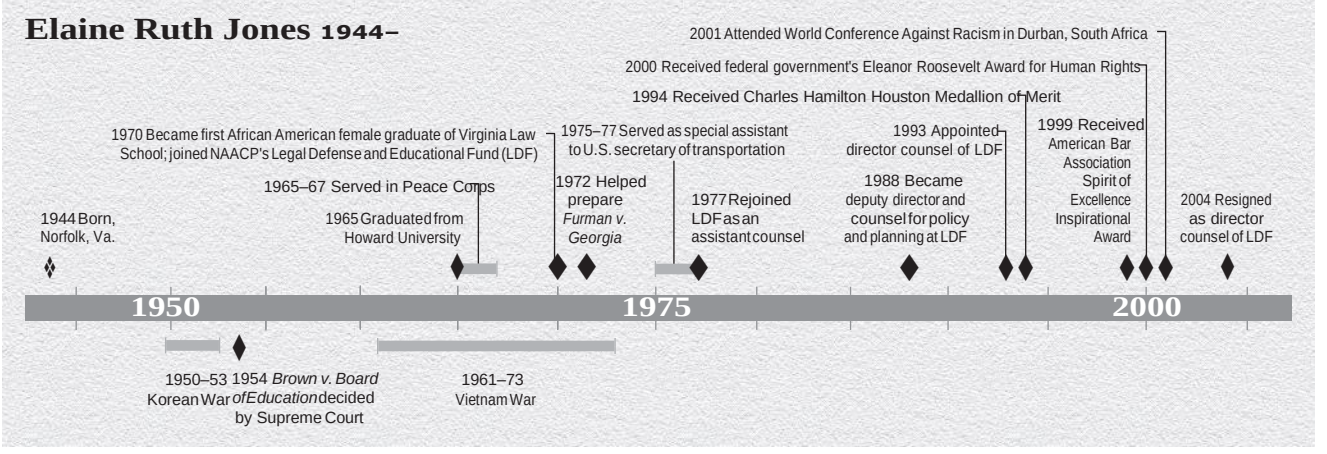


Barbara Jordan.
LIBRARY OF CONGRESS

WHAT PEOPLE WANT IS VERY SIMPLE. THEY WANT AN AMERICA AS GOOD AS ITS PROMISE.
—BARBARA JORDAN

v JORDAN, BARBARA CHARLINE

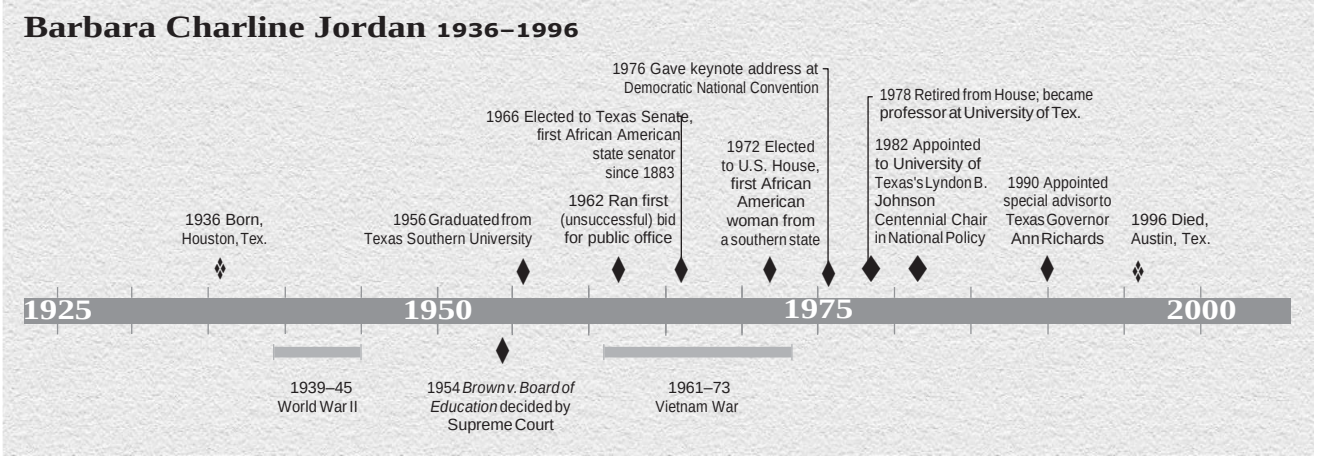
Barbara Charline Jordan, attorney, legislator, and educator, was the first African American woman from a Southern state to win election to the U.S. Congress.

Jordan was born on February 21, 1936, in Houston, Texas, the third and youngest daughter of the Reverend Benjamin Jordan and Arlyne Jordan. In 1952, she graduated at the top of her class from Phyllis Wheatley High School and enrolled in Texas Southern University (TSU), an all-black college, where she joined the debate team and traveled to competitions throughout the United States. The team was restricted to blacks-only motels and restaurants in many of the states bordering Texas.

In 1956, Jordan graduated magna cum laude from TSU with a bachelor's degree in history and political science. She enrolled in Boston University, in Massachusetts—one of six women, including two black women, in the law school's first-year class. During her first year of law school, Jordan realized how inadequate her prior education in Houston had been. But she was successful at Boston, and, she returned to Houston and opened a law practice after her graduation in 1959.

Jordan was also drawn to politics. She became involved in the 1960 presidential campaign and went to work for JOHN F. KENNEDY and for fellow Texan LYNDON B. JOHNSON, both DEMOCRATIC PARTY nominees. In 1962 she made her first unsuccessful bid for a seat in the Texas House of Representatives, running from Harris County. She ran again in 1964, and again was defeated. Jordan decided to make a third attempt at winning public office and in 1966 she was elected to the Texas Senate. She was the first black state senator elected in Texas since 1883.

Shortly after her election, Jordan was invited to the White House by President Johnson to



discuss his upcoming CIVIL RIGHTS legislation. In 1972 she was elected to the U.S. House of Representatives, becoming the first black woman from a Southern state to serve in Congress. She immediately enlisted former president Johnson's assistance in winning an appointment to the House Judiciary Committee, where she gained national recognition for her remarks at the impeachment proceedings against President RICHARD NIXON.

Jordan gained additional prominence in July 1976 when she gave a keynote address at the Democratic National Convention. Her speech about the Democratic Party and the meaning of democracy in the United States brought her a standing ovation. A movement to put Jordan on the ticket as vice president gained tremendous support, but Jordan held a press conference to announce that she did not wish to be nominated.

Jordan served three terms in the House of Representatives and sponsored landmark legislation to expand the Voting Rights Act, 42 U.S.C.A. § 1973 et seq., to require printing of bilingual ballots, and to toughen enforcement of civil rights laws. She resigned from Congress in 1978 and became a professor at the LYNDON BAINES JOHNSON School of Public Affairs at the University of Texas at Austin. In 1982, she was appointed to the university's Lyndon B. Johnson Centennial Chair in National Policy, where she taught courses on ethics and national policy issues.

In December 1990 Texas Governor Ann W. Richards appointed Jordan as a special adviser to her administration on ethics in government. Richards had made ethics a primary focus of her campaign, and she asked Jordan to author ethics legislation and work with gubernatorial appointees on guidelines for ethical behavior in their public service. Jordan died in Austin, Texas on January 17, 1996.

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JOURNAL

A book or log in which entries are made to record events on a daily basis. A book where transactions or events are recorded as they occur.

A legislative journal is kept by the clerk and is a daily record of the legislative proceedings. Typical entries include actions taken by various committees and a chronological accounting of bills introduced on the floor.

J.P.

An abbreviation for justice of the peace, a minor ranking judicial officer with limited statutory jurisdiction over preservation of the peace, civil cases, and lesser criminal offenses.

J.S.D.

An abbreviation for Doctor of Juridical Science, a degree awarded to highly qualified individuals who have successfully completed a prescribed course of advanced study in law after having earned J.D. and LL.M. degrees.

The standards for admission to J.S.D. programs are stringent. Although specific academic requirements for acceptance into a J.S.D. program vary from one law school to another, ordinarily applicants must hold J.D. and LL.M. degrees. They must have completed their courses of study with a certain minimum grade average in order to qualify for this advanced program.

Once accepted, each student generally has a full-time faculty member who acts as research advisor concerning the preparation of the student's thesis, which is a requirement for obtaining the J.S.D. degree. It is often mandatory that all work required for a J.S.D. degree must be completed within five years of the commencement of the student's program of study. J.S.D. is also commonly abbreviated as S.J.D.

JUDGE

To make a decision or reach a conclusion after examining all the factual evidence presented. To form an opinion after evaluating the facts and applying the law.

A public officer chosen or elected to preside over and to administer the law in a court of justice; one who controls the proceedings in a courtroom and decides questions of law or discretion.

As a verb, the term *judge* describes a process of evaluation and decision. In a legal case, this process may be conducted by either a judge or a

jury. Decisions in any case must be based on applicable law. Where the case calls for a jury VERDICT, the judge tells the jury what law applies to the case.

As a noun, *judge* refers to a person authorized to make decisions. A judge is a court officer authorized to decide legal cases. A judge presiding over a case may initiate investigations on related matters, but generally judges do not have the power to conduct investigations for other branches or agencies of government.

Judges must decide cases based on the applicable law. In some cases, a judge may be asked to declare that a certain law is unconstitutional. Judges have the power to rule that a law is unconstitutional and therefore void, but they must give proper deference to the legislative body that enacted the law.

There are two types of judges: trial court and appellate. Trial court judges preside over trials, usually from beginning to end. They decide pretrial motions, define the scope of discovery, set the trial schedule, rule on oral motions during trial, control the behavior of participants and the pace of the trial, advise the jury of the law in a jury trial, and sentence a guilty DEFENDANT in a criminal case.

Appellate judges hear appeals from decisions of the trial courts. They review trial court records, read briefs submitted by the parties, and listen to oral arguments by attorneys. The judges then decide whether error or injustice occurred in the trial court.

Judges are also distinguished according to their jurisdiction. For example, federal court judges differ from state court judges. They operate in different courtrooms, and they hear different types of cases. A federal court judge hears cases that fall within federal jurisdiction. Generally, this means cases that involve a question of federal law or the U.S. Constitution, involve parties from different states, or name the United States as a party. State court judges hear cases involving state law, and they have jurisdiction over many cases involving federal law.

Some judges can hear only certain cases in SPECIAL COURTS with limited SUBJECT MATTER JURISDICTION. For example, a federal BANKRUPTCY court judge may preside over only bankruptcy cases. Other special courts with limited subject matter jurisdiction include tax, probate, juvenile, and traffic courts.

Justices make up the upper echelon of appellate judges. The term *justice* describes judges serving on the highest court in a jurisdiction. In some jurisdictions, a justice may be any appellate judge.

Judges are either appointed or elected. On the federal level, district court judges, appellate court judges, and justices of the Supreme Court are appointed by the president subject to the approval of Congress. On the state level, judges may be appointed by the governor, selected by a joint ballot of the two houses of the state legislature, or elected by the voters of the state.

On the federal level, judges have lifetime tenure. Most state court judges hold their office for a specified number of years. If a state court judge is appointed by the governor, the judge's term may be established by the governor. In some states, a judge's term is fixed by statute. All state jurisdictions have a mandatory retirement age. In New Hampshire, for example, a judge must retire by age 70 (N.H. Const. pt. 2, art. 78). There is no mandatory retirement age for justices and judges on the federal level.

Judges' retirement benefits are provided for by statute. On the federal level, a retiring judge may receive, for the remainder of the judge's life, the salary that she or he was receiving at the time of retirement. To qualify for retirement benefits, a judge must meet minimum service requirements. For example, a judge who retires at age 65 must have served 15 years as a judge in the federal court system; at age 66, 14 years; and so on until age 70 (§ 371). If a judge is forced to retire because of disability and has not qualified for benefits under § 371, the judge may still receive a full salary for life, if she or he served 10 years. If the judge served less than 10 years, she or he may receive half of her or his salary for life (28 U.S.C.A. § 372).

Judges must follow ethical rules. In all jurisdictions, statutes specify that a judge may hold office only during a time of GOOD BEHAVIOR. In addition, judges are guided by the standards set forth in the AMERICAN BAR ASSOCIATION (ABA) Model CODE OF JUDICIAL CONDUCT. The code, which underwent substantial revisions in 2007 by an ABA Joint Commission, establishes ethical standards for judges and provides guidance to those seeking judicial office.

If a judge violates the law or an ethical rule, the judge may be removed from office. In jurisdictions in which judges are elected, they

may be removed from office by popular vote or impeached by act of the legislature. In states where judges are appointed, the legislature or the governor is authorized to remove them from office, but only for ethical or legal violations. This is because the power of the judiciary is separate from and equal to the power of the legislative and executive branches, and unfettered control of the judiciary by the other two branches would upset the balance of power.

Judges are distinct from magistrates. Magistrates are court officers who are empowered by statute to decide pretrial issues and preside over minor cases. Their judicial powers are limited. In the federal court system, for example, magistrates may not preside over FELONY criminal trials. They may preside over civil trials and MISDEMEANOR criminal trials, but only with the consent of all the parties (28 U.S.C.A. §§ 631–639).

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Canons of Judicial Ethics; Code of Judicial Conduct; Court Opinion; Discretion in Decision Making; Judicial Action; Judicial Conduct; Judicial Review.

JUDGE ADVOCATE

A judge advocate is a legal adviser on the staff of a military command. A designated officer of the Judge Advocate General's Corps (JAGC) of the U.S. Army, Navy, Air Force, or Marine Corps.

The Judge Advocate General's Corps (JAGC) was created by GEORGE WASHINGTON on July 29, 1775, only 44 days after he took command of the Continental army. Since that time, the U.S. Army JAGC has grown into the largest government law firm, numbering 1,500 judge advocates on active duty.

Judge advocates are attorneys who perform legal duties while serving in the U.S. Armed Forces. They provide legal services to their branch of the armed forces and LEGAL REPRESENTATION to members of the armed services. In addition, judge advocates practice international, labor, contract, environmental, tort, and administrative law. They practice in military, state, and federal courts. A judge advocate attorney does not need to be licensed to practice law in the state in which he or she practices because these individuals are part of a separate, military system of justice.

Under the UNIFORM CODE OF MILITARY JUSTICE, judge advocates are the central participants in a military COURT-MARTIAL (military criminal trial). A judge advocate administers the oath to other members of the court, advises the court, and acts either as a prosecutor or as a defense counsel for the accused. A judge advocate acting as defense counsel advises the military prisoner on legal matters, protects the accused from making incriminating statements, and objects to irrelevant or improper questions asked at the military proceeding. All sentences with a penalty of dismissal, punitive discharge, confinement for a year or more, or death are subject to review by a court of military review in the office of the judge advocate general of the U.S. Army, Navy, or Air Force, depending on the branch of service to which the DEFENDANT belongs. A sentence imposed on a member of the Marine Corps is reviewed by the office of the judge advocate general of the U.S. Navy.

A judge advocate is admitted to the armed services as an officer. Because the Uniform Code of Military Justice is different from civilian law in many respects, a judge advocate undergoes an orientation and then education in MILITARY LAW. The U.S. Army's JAGC school, for example, at Charlottesville, Virginia, provides a ten-week academic course for new JAGC officers to learn about the mission of the corps and to receive an overview of military law.

Each branch of the armed forces has a judge advocate general, an officer who is in charge of all judge advocates and who is responsible for all legal matters affecting that branch of the service. In the U.S. Army and U.S. Air Force, the judge advocate general holds the rank of major general. In the U.S. Navy this officer is a rear admiral. The judge advocate general serves as a legal adviser to the chief of staff of the

respective service and, in some cases, to the secretary of the department.

The public has been given a look at judge advocates through film and television. For example, the movie *A Few Good Men* (1992) portrays judge advocates as prosecutors for military crimes. However, the duties of a judge advocate extend far beyond the military courtroom. Since the 1970s, judge advocates have played a key role in the planning of military strategy for top-secret missions and other wartime issues. Further, judge advocates, along with commanding officers of the armed services, take part in the development and application of rules of engagement, which guide U.S. troops in their use of force.

One of the most important rules that involve judge advocates is target planning. When deciding whether something is a proper target, a judge advocate must first determine that it is a military necessity for the enemy. If it passes the first test, the judge advocate must investigate whether civilians will be affected. Finally, judge advocates must perform a balancing test. The possible loss of civilians and their property—often referred to as "collateral damage"—cannot be excessive, as compared to the military gain achieved by the attacks. Judge advocates also identify targets that are off-limits. In these wartime contexts, target selection clearly becomes a life-or-death decision.

During the VIETNAM WAR, only one judge advocate was called upon by the U.S. Air Force to give operations law advice. Major Walter Reed, who would later become judge advocate general of the U.S. Air Force, advised which targets were restricted by the military's rules of engagement and the Law of War, the codified laws created by the Hague Convention in 1907, to which most nations adhere. However, in 1972 Air Force General John D. Lavelle attacked targets in North Vietnam and thus violated the rules of engagement.

Lavelle claimed that his superiors had supported the attacks and that the targets had been included in the rules of engagement when, in fact, they had not been. It then became clear that the drafting, training, and execution of the rules of engagement needed more careful review. The Joint Chiefs of Staff Peacetime Rules of Engagement (later renamed the Standing Rules of Engagement) were established, and judge advocates were called upon to interpret the rules and to advise combat commanders in the planning and execution of military operations. Now, judge advocates are the primary developers of the rules of engagement and their application for military missions. All use of force must be authorized by these rules. In addition, the rules must be clear, yet flexible, so that a soldier is able to make an on-the-spot decision in critical situations.

During Operation Desert Shield and Operation Desert Storm, more than 250 judge advocates were stationed in Saudi Arabia. The judge advocates provided significant support, which included the review of all target lists, the training of troops on the rules of engagement, parachuting in with army troops, and deciding the issue of whether the enemy could be buried alive—to which the answer was yes. The judge advocates printed pocket-size cards, which provided peacetime and wartime rules, for troops to carry.

The important role played by judge advocates continued as the United States attacked Afghanistan, in 2001, and Iraq, in 2003, as part of the WAR ON TERRORISM. The capture, incarceration, and trial of enemy combatants required judge advocates to represent TERRORISM suspects. A number of judge advocates objected to the rules governing the military commissions that would try the prisoners, arguing that they violated constitutional principles. In addition, some of the judge advocates sought HABEAS CORPUS rights for the prisoners they represented. The U.S. Supreme Court agreed in two cases, ruling that prisoners could file petitions for habeas corpus that challenged their imprisonment.

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JUDGMENT

A decision by a court or other tribunal that resolves a controversy and determines the rights and obligations of the parties.

A judgment is the final part of a court case. A valid judgment resolves all the contested issues and terminates the lawsuit, because it is regarded as the court's official pronouncement of the law on the action that was pending before it. It states who wins the case and what remedies the winner is awarded. Remedies may include money damages, injunctive relief, or both.

Enforcement of Foreign Judgments

The principle of territoriality generally limits the power of a state of judicial enforcement of actions to be taken within its territory. Consequently, when a judgment is to be enforced out of property in another state, or requires some act to be done in that other state, the judgment must be brought to the judicial tribunals of the second state for implementation. This allows the judicial tribunal of the enforcing state to examine the judgment to determine whether it should be recognized and enforced.

Conditions for recognizing and enforcing a judgment of a court of another country may be established by treaty or follow general principles of international law. Under those principles, a court of one state will enforce a foreign judgment if (1) the judgment is final between the parties; (2) the court that granted the judgment was competent to do so and had jurisdiction over the parties; (3) regular proceedings were followed that allowed the losing party a chance to be heard; (4) no fraud was worked upon the first court; and (5) enforcement will not violate the public policy of the enforcing state.

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A judgment also signifies the end of the court's jurisdiction in the case. The Federal Rules of CIVIL PROCEDURE and most state rules of civil procedure allow appeals only from final judgments.

A judgment must be in writing and must clearly show that all the issues have been adjudicated. It must specifically indicate the parties for and against whom it is given. Monetary judgments must be definite, specified with certainty, and expressed in words rather than figures. Judgments affecting real property must contain an explicit description of the realty so that the land can easily be identified.

Once a court makes a judgment, it must be dated and docketed with the court administrator's office. Prior to modern computer databases, judgments were entered in a docket book, in alphabetic order, so that interested outsiders could have official notice of them. An index of judgments was prepared by the COURT ADMINISTRATOR for record keeping and notification purposes. Most courts record their judgments electronically and maintain computer docketing and index information. Though the means of storing the information are different, the basic process remains the same.

A court may amend its judgment to correct inaccuracies or ambiguities that might cause its actual intent to be misconstrued. Omissions, erroneous inclusions, and descriptions are correctable. However, persons who were not parties to the action cannot be brought into the lawsuit by an amended judgment. The Federal Rules of Civil Procedure allow a judgment to be amended by a motion served within ten days after the judgment is entered. State rules of civil procedure also permit amendment of a judgment.

Different types of judgments are made, based on the process the court uses to make the final decision. A judgment on the merits is a decision arrived at after the facts have been presented and the court has reached a final determination of which party is correct. For example, in a NEGLIGENCE lawsuit that is tried to a jury, the final decision will result in a judgment on the merits.

A judgment based solely on a procedural error is a dismissal WITHOUT PREJUDICE and generally will not be considered a judgment on the merits. A party whose case is dismissed without prejudice can bring the suit again as long as the procedural errors are corrected. A party that receives a judgment on the merits is barred from relitigating the same issue by the doctrine of RES JUDICATA. This doctrine establishes the principle that an issue that is judicially decided is decided once and for all.

A summary judgment may occur very early in the process of a lawsuit. Under Rule 56 of the Federal Rules of Civil Procedure and analogous state rules, any party may make a motion for a summary judgment on a claim, counterclaim, or CROSS-CLAIM when he or she believes that

there is no genuine issue of material fact and that he or she is entitled to prevail as a MATTER OF LAW. A motion for summary judgment can be directed toward the entire claim or defense or toward any portion of the claim or defense. A court determines whether to grant summary judgment.

A JUDGMENT NOTWITHSTANDING THE VERDICT is a judgment in favor of one party despite a VERDICT in favor of the opposing litigant. A court may enter a judgment notwithstanding the verdict, thereby overruling the jury verdict, if the court believes there was insufficient evidence to justify the jury's decision.

A consent judgment, or agreed judgment, is a final decision that is entered on agreement of the litigants. It is examined and evaluated by the court, and, if sanctioned by the court, is ordered to be recorded as a binding judgment. Consent judgments are generally rendered in domestic relations cases after the husband and wife agree to a property and support settlement in a divorce.

A DEFAULT JUDGMENT results from the named defendant's failure to appear in court or from one party's failure to take appropriate procedural steps. It is entered upon the failure of the party to appear or to plead at an appropriate time. Before a default judgment is entered, the DEFENDANT must be properly served notice of the pending action. The failure to appear or answer is considered an admission of the truth of the opposing party's pleading, which forms the basis for a default judgment.

A DEFICIENCY JUDGMENT involves a creditor and a debtor. Upon a debtor's failure to pay his or her obligations, a deficiency judgment is rendered in favor of the creditor for the difference between the amount of the indebtedness and the sum derived from a judicial sale of the debtor's property held in order to repay the debt.

Once a judgment is entered, the PREVAILING PARTY may use it to collect damages. This may include placing a judgment LIEN on the losing party's real property, garnishing (collecting from an employer) the losing party's salary, or attaching the losing party's PERSONAL PROPERTY. A judgment lien is a claim against the real estate of a party; the real estate cannot be sold until the judgment holder is paid. Attachment is the physical seizure of property owned by the losing party by a law officer, usually a sheriff, who gives the property to the person holding the judgment.

Under the FULL FAITH AND CREDIT CLAUSE of the Constitution, a judgment by a state court must be fully recognized and respected by every other state. For example, suppose the prevailing party in a California case knows that the defendant has assets in Arizona that could be used to pay the judgment. The prevailing party may docket the California judgment in the Arizona county court where the defendant's property is located. With the judgment now in effect in Arizona, the prevailing party may obtain a writ of execution that will authorize the sheriff in that Arizona county to seize the property to satisfy the judgment.

Once a judgment has been paid by the losing party in a lawsuit, that party is entitled to a formal discharge of the obligation, known as a satisfaction of judgment. This satisfaction is acknowledged or certified on the judgment docket.

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JUDGMENT CREDITOR

A party to which a debt is owed that has proved the debt in a legal proceeding and that is entitled to use judicial process to collect the debt; the owner of an unsatisfied court decision.

A party that wins a monetary award in a lawsuit is known as a judgment creditor until the award is paid, or satisfied. The losing party, which must pay the award, is known as a judgment debtor. A judgment creditor is legally entitled to enforce the debt with the assistance of the court.

State laws provide remedies to a judgment creditor in collecting the amount of the judgment. These measures bring the debtor's property into the custody of the court in order to satisfy the debtor's obligation: They involve the seizure of property and money. The process of enforcing the judgment debt in this way is called execution. The process commences with a hearing called a supplementary proceeding. The judgment debtor is summoned to appear before the court for a hearing to determine the nature and value of the debtor's property.

If the property is subject to execution, the court orders the debtor to relinquish it.

Because debtors sometimes fail to surrender property to the court, other means of satisfying the debt may be necessary. In these cases the law refers to an unsatisfied execution—an outstanding and unfulfilled order by the court for property to be given up. Usually this will lead the judgment creditor to seek a writ of attachment, the legal means by which property is seized. To secure a writ of attachment, the judgment creditor must first place a judgment LIEN on the property. Also called an encumbrance, a lien is a legal claim on the debtor's property that gives the creditor a qualified right to it. Creditors holding liens are called secured creditors. The writ of attachment sets in motion the process of a levy, by which a sheriff or other state official actually seizes the property and takes it into the physical possession of the court. The property can then be sold to satisfy the debt.

Occasionally the judgment creditor is frustrated in the course of enforcing a judgment debt. Debtors may transfer property to another owner, which makes collection through attachment more difficult. Liens on property usually prevent the transfer of ownership. Where a transfer of ownership has occurred, state laws usually allow the judgment creditor to sue the third party who now possesses the property. Some states provide additional statutory relief to creditors in cases where debtors fraudulently transfer assets in order to escape a judgment debt. Florida's Uniform Fraudulent Transfer Act (Fla. Stat. § 726.101 et seq.), for instance, allows creditors more time to pursue enforcement of the debt.

Another process for recovery is garnishment, which targets the judgment debtor's salary or income. Through garnishment a portion of the judgment debtor's income is regularly deducted and paid to the judgment creditor. The creditor is known as a garnishor, and the debtor as a garnishee.

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JUDGMENT DEBTOR

A party against which an unsatisfied court decision is awarded; a person who is obligated to satisfy a court decision.

The term *judgment debtor* describes a party against which a court has made a monetary award. If a court renders a judgment involving money damages, the losing party must satisfy the amount of the award, which is called the judgment debt. Such a decision gives the winner of the suit, or judgment creditor, the right to recover the debt, or award, through extraordinary means, and the court may help the creditor do so. State law governs how the debt may be recovered. Although the recovery process can be harsh, the law provides the debtor with certain rights and protection.

Following the VERDICT, other legal steps are usually taken against the judgment debtor. The court can order the debtor to appear for an oral hearing to assess the debtor's assets. If it is determined that the debtor has assets sufficient to satisfy the judgment debt, the court may order the debtor to surrender certain property to it. Commonly the judgment creditor must take additional legal action. This involves seeking the court's assistance in seizing the debtor's property, by the process known as attachment, or a portion of the debtor's salary, by the process called garnishment.

For centuries, attachment of property was allowed ex parte—without first allowing the DEFENDANT debtor to argue against it. However, contemporary law affords the debtor some protection. The debtor has the right to minimal due process. States generally require that the judgment creditor first secure a writ of attachment, that the debtor be given notice before seizure occurs, and that the debtor have the right to a prompt hearing afterward to challenge the seizure.

Other protections apply to both property and wages. First, not every kind of property is subject to attachment. States provide exemptions for certain household items, clothing, tools, and other essentials. Additional provisions may protect individuals in cases of extreme hardship. Where the creditor seeks garnishment in order to seize the judgment debtor's wages, laws generally exempt a certain amount of the salary that is necessary for personal or family support.

Courts can exercise their discretion to go beyond the statutory protections for judgment debtors. They can exempt more property from

attachment than that specified in a statute. In some cases they can also deny the attachment or garnishment altogether. This can occur when the creditor seeks more in property than the value of the judgment debt, or where the property sought is an ongoing business that would be destroyed by an attachment.

JUDGMENT DOCKET

A list under which judicial orders of a particular court are recorded by a clerk or other designated officer to be available for inspection by the public.

A judgment docket serves an important function by providing parties interested in learning of the existence of a judgment or a LIEN on property to enforce a judgment with access to such information. The recording of a judgment in a judgment docket is considered official notice to all parties of its existence. The rules of procedure of the particular court govern the maintenance of the judgment docket.

JUDGMENT NOTE

A promissory note authorizing an attorney, holder, or clerk of court to appear for the maker of the note and confess, or assent to, a judgment to be entered against the maker due to default in the payment of the amount owed.

A judgment note is also called a COGNOVIT NOTE and is invalid in many states.

JUDGMENT NOTWITHSTANDING THE VERDICT

A judgment entered by the court in favor of one party even though the jury returned a verdict for the opposing party.

The phrase "judgment notwithstanding the verdict" is abbreviated JNOV, which stands for its Latin equivalent, judgment "*non obstante veredicto.*" The remedy of JNOV applies only in cases decided by a jury. Originally this remedy could be entered only in favor of the PLAINTIFF, and the similar remedy of ARREST OF JUDGMENT could be entered only in favor of the DEFENDANT. Under modern law a JNOV is generally available to both plaintiffs and defendants, and an arrest of judgment is primarily used with judgments in criminal cases. A JNOV is proper when the court finds that the party bearing the BURDEN OF PROOF fails to make out a PRIMA FACIE case (a case that on first appearance will prevail unless contradicted by evidence).

To be granted relief by a JNOV, a party must make a motion seeking that relief. The motion generally must be made in writing and must set forth the specific reasons entitling the party to relief. Many statutes and rules require that the moving party must have previously sought a DIRECTED VERDICT, and that the grounds for the JNOV motion be the same or nearly the same as those for the directed VERDICT. A directed verdict is a request by a party that the judge enter a verdict in that party's behalf before the case is submitted to the jury.

Although a jury generally must return a verdict before a motion for JNOV can be made, if the jury does not agree on a verdict, as in a jury deadlocked, some courts will hear a motion for JNOV. However, some statutes do not permit a court to hear a motion for JNOV under such circumstances.

In deciding a motion for JNOV, the court is facing questions only of law, not fact. The court must consider only the evidence and any inferences therefrom, and must do so in the light most advantageous to the nonmoving party. The court must resolve any conflicts in favor of the party resisting the motion. If there is enough evidence to make out a prima facie case against the moving party, or evidence tending to support the verdict, then the court must deny the motion for JNOV. Some courts maintain that if there is a conflict of evidence, such that the jury could decide either way based on factors such as the credibility of witnesses, the court should deny the motion. Courts approach motions for JNOV with extreme caution and generally will grant them only in clear cases in which the evidence overwhelmingly supports the moving party.

In entering a JNOV, the court is simply reversing the jury's verdict; the motion cannot be the basis for increasing or decreasing the verdict. When granting a JNOV, the court needs to independently assess the damages or order a new trial on the issue of damages.

Under the Federal Rules of CIVIL PROCEDURE, both a JNOV and a motion for directed verdict are now encompassed within a motion for judgment as a MATTER OF LAW. The change is one of terminology only and not of substance. Many state statutes or rules of court provide for the remedy of a JNOV, although they may call it something different. The applicable state statutes

or rules are substantially similar to the federal rules.

A motion for JNOV is made at the close of all the evidence, after the jury returns a verdict, within a period of time specified by statute. An order granting a motion for a JNOV is often considered a delayed-action directed verdict because it presents the same issues. In fact, in some jurisdictions the denial of a motion for a directed verdict is a prerequisite to the entry of a JNOV. If the particular case involves several plaintiffs or defendants, each of them must separately make a proper motion for a directed verdict in order to move properly for a JNOV later. Current procedure holds a motion for JNOV proper when a prior motion for a directed verdict has been denied. If the court denies a motion for a directed verdict after all the evidence has been presented, then the court is deemed to have submitted the case to the jury subject to a later determination of the legal issues raised by the motion, and the court may grant a motion for JNOV after the jury returns a verdict.

To promote judicial economy, some statutes, including the federal rules, permit a party to make alternative motions for a JNOV and for a new trial. Those motions can also be made separately. The statutes that permit the alternative motions generally provide that the motions should be decided together, such that the trial court's rulings can be reviewed together on appeal. If the court denies the motion for a new trial, then the alternative motion for JNOV is also assumed to be denied. If the court grants the motion for a new trial, then the motion for JNOV is deemed to be effectively disposed of or denied. The court does not have to rule on the motion for JNOV if the motion presents the same issues on which the court ruled in considering motions for a directed verdict and for a new trial. Some court rules and statutes, including the federal rules, provide that a court may grant both of the alternative motions, even though they are inconsistent. Courts may avoid the inconsistency by providing that the ruling granting a new trial is effective only if the ruling granting a JNOV is overturned on appeal. In fact, federal courts have held that it is the duty of the trial court to so condition an order granting these alternative motions.

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JUDGMENT PROOF

A term used to describe an individual who is financially unable to pay an adverse court decision awarding a sum of money to the opposing party.

A judgment-proof individual has no money or property within the jurisdiction of the court to satisfy the judgment or is protected by wage laws that exempt salaries and property from formal judicial process.

JUDICARE

To decide or determine in a judicial manner.

In civil and old ENGLISH LAW, judicare means to judge, to pass judgment or sentence, or to decide an issue in an impartial fashion. It refers to the interpretation and application of the laws to the facts and the administration of justice.

JUDICATURE

A term used to describe the judicial branch of government; the judiciary; or those connected with the court system.

Judicature refers to those officers who administer justice and keep the peace. It signifies a tribunal or court of justice.

The JUDICATURE ACTS of England are the laws that established the present court system in England.

JUDICATURE ACTS

English statutes that govern and revise the organization of the judiciary.

Parliament enacted a series of statutes in 1873 during the reign of Queen Victoria that changed and restructured the court system of England. Consolidated and called the JUDICATURE Act of 1873, these enactments became effective on November 1, 1875, but were later amended

in 1877. As a result, superior courts were consolidated to form one supreme court of judicature with two divisions, the High Court of Justice, primarily endowed with ORIGINAL JURISDICTION, and the COURT OF APPEAL, which possessed appellate jurisdiction.

The current court system of England is organized according to the Judicature Acts, which were redrafted in 1925 as the Supreme Court of Judicature (Consolidation) Act and which made the Court of Appeals, consisting of a civil division and criminal division, the center of the English judiciary.

JUDICIAL

Relating to the courts or belonging to the office of a judge; a term pertaining to the administration of justice, the courts, or a judge, as in judicial power.

A judicial act involves an exercise of discretion or an unbiased decision by a court or judge, as opposed to a ministerial, clerical, or routine procedure. A judicial act affects the rights of the parties or property brought before the court. It is the interpretation and application of the law to a particular set of facts contested by litigants in a court of law, resulting from discretion and based upon an evaluation of the evidence presented at a hearing. Judicial connotes the power to punish, sentence, and resolve conflicts.

JUDICIAL ACTION

The adjudication by the court of a controversy by hearing the cause and determining the respective rights of the parties.

A judgment, decree, or decision rendered by a court, which concerns a contested issue brought before the tribunal by parties who voluntarily appear or who have been notified to appear by SERVICE OF PROCESS. It is the interpretation, application, and enforcement of existing law relating to a particular set of facts in a particular case. JUDICIAL ACTION is the determination of the rights and interests of adverse parties.

Judicial action is taken only when a justiciable controversy arises or where a claim of right is asserted against a party who has an interest in contesting that claim. A court does not make a decision when a hypothetical difference exists but only when there is an actual controversy affecting the rights and interests of the parties.

JUDICIAL ADMINISTRATION

The practices, procedures, and offices that deal with the management of the administrative systems of the courts.

Judicial administration, also referred to as court administration, is concerned with the day-to-day and long-range activities of the court system. Every court in the United States has some form of administrative structure that seeks to enhance the work of judges and to provide services to attorneys and citizens who use the judicial system. Since the 1970s the administration of the courts has played a central role in the judiciary's response to increased court filings and shrinking budgets.

The administration of the courts has traditionally been concerned with overseeing budgets, selecting juror pools, assigning judges to cases, creating court calendars of activities, and supervising nonjudicial personnel. Often administrative decisions are made by judges, either individually or as a group. Clerks of court, now more commonly known as court administrators, and their staff are called on to accept the filing of court documents, to maintain a file system of cases and a record of all final judgments, and to process paperwork generated by judges.

Early in the twentieth century, ROSCOE POUND, a noted jurist and scholar, called for the reform of court administration to ensure efficiency, accuracy, and consistency in the judicial system. Nevertheless, few systematic attempts to modernize and rationalize courts were made until the early 1970s. In 1971 the creation of the National Center for State Courts (NCSC)—an independent, nonprofit organization dedicated to the improvement of justice—provided local and state courts with technical assistance on how to modernize. The NCSC, located in Williamsburg, Virginia, was started at the urging of Chief Justice WARREN E. BURGER, who saw a need for leadership in this field.

The staffing of administrative personnel in the courts has changed since the 1970s. The Institute for Court Management (ICM), a division of the NCSC, develops court leaders through education, training, and a court executive development program. The ICM has provided valuable assistance to thousands of court administrators in the United States, disseminating information on new methods and techniques of court administration. More court administrators now have college and

advanced degrees, and many have attended law school.

Judicial administration has largely been taken over by court managers. State courts are organized at the state level, under the direction of a state COURT ADMINISTRATOR. State court administration oversees legislative budgets, personnel administration, and court research and planning. Planning for the future is an integral part of the administrative agenda. The federal courts are organized somewhat differently. There is at least one U.S. district court in each state, but states with larger populations have two or more. There is a clerk of court in each federal district who has duties similar to that of a state court administrator.

Court administrators explore alternative ways of managing court cases, often by statistical research. Various systems of case management are employed in the United States, but the trend has been to seek methods that reduce the amount of time a case remains active in the courts. Consequently, judges often have less control over their time as court managers set out the work that must be accomplished.

Computers have also reshaped the administration of the courts. Before the 1980s courts recorded everything on paper. With the integration of computers and database software, case information is now recorded and retrieved electronically. The use of new technology has improved the efficiency of court administration. Appellate courts distribute court opinions and court rules through computer bulletin boards and the Internet. Some courts allow access to their database information through computer modems.

Another function of judicial administration is to eliminate bias. Many state court systems have appointed committees and task forces to investigate racial and gender bias in the courts. Court administrators have been charged with developing ways of eliminating bias, ensuring diversity in the court system, and providing easier access to the courts for pro se litigants, also called pro per litigants in some jurisdictions, (persons representing themselves without an attorney). The certification of court interpreters for testimony given in languages other than English has emerged as a leading issue in court administration.

New divisions of administrative oversight have developed since the 1970s. Offices of PROFESSIONAL RESPONSIBILITY, which administer and investigate ethical complaints against lawyers, are commonplace. Many states require that lawyers take CONTINUING LEGAL EDUCATION (CLE) courses so as to maintain professional competence. Offices have been created in state court administration to accredit CLE programs and to monitor compliance by lawyers.

JUDICIAL ASSISTANCE

Aid offered by the judicial tribunals of one state to the judicial tribunals of a second state.

Judicial assistance may consist of the enforcement of a judgment rendered by a court of another state or other actions to assist current judicial proceedings taking place in the state requesting the cooperation of the foreign court. A *letter rogatory*, the formal term for such a request, asks a foreign court to take some judicial action, such as issue a summons, compel production of documents, or take evidence. Treaties may be concluded between countries to establish regular methods of transmitting these requests and to assure reciprocal treatment in furnishing assistance.

CROSS REFERENCE

Letters Rogatory.

JUDICIAL CONDUCT

See CODE OF JUDICIAL CONDUCT.

JUDICIAL CONFERENCE OF THE UNITED STATES

The JUDICIAL CONFERENCE OF THE UNITED STATES formulates the administrative policies for the federal courts. The Judicial Conference also makes recommendations on a wide range of topics that relate to the federal courts. The conference is chaired by the chief justice of the U.S. Supreme Court. Other members include the chief judge of each federal judicial circuit, one district judge from each federal judicial circuit, and the chief judge of the U.S. Court of International Trade.

The Judicial Conference was created in response to a need for uniformity in rules and procedures in the federal court system. In the early 1920s, Chief Justice WILLIAM H. TAFT, of the Supreme Court, led a reform effort that urged centralized review of federal district courts. Until that time, the procedures and practices in

federal trial courts varied widely from circuit to circuit, causing confusion among attorneys and judges. The result of the reform effort was the passage in 1922 of a federal statute that created the Conference of Senior Circuit Judges (Pub. L. No. 67-297, 423 Stat. 837, 838). The Conference of Senior Circuit Judges was renamed the Judicial Conference of the United States in 1948 (Act of June 25, 1948, ch. 646, 62 Stat. 902, § 331 [codified as amended at 28 U.S.C.A. § 331 (1988)]).

The Judicial Conference is a creation of Congress, and it has only the powers that Congress gives it. Its membership and duties have been expanded by Congress, but its primary missions have remained the same.

The Judicial Conference performs two major functions. The first is to study and offer improvements on federal court rules and procedures. These rules and procedures cover matters ranging from the sentencing of a criminal DEFENDANT to the service of a complaint and court summons on a civil defendant. The second major function of the Judicial Conference is to supervise the administration of the federal courts.

In its administrative capacity, the Judicial Conference oversees the Administrative Office of the U.S. Courts. This is the administrative nerve center of the federal courts. The Judicial Conference formulates the fiscal and personnel policies for the federal courts, and the Administrative Office implements those policies.

The Judicial Conference also reviews orders that judicial councils for the federal circuits issue on complaints of judicial misconduct or judicial disability, and it may reassign federal judges to different federal courts. The final decision on administrative matters that are not covered by existing statutes, rules, and regulations is made by the judicial council of the appropriate federal circuit.

The Judicial Conference recommends ways to improve rules and procedures in the federal courts. Its recommendations do not carry the force of law, but the conference is widely recognized as the authority on federal court rules and procedures.

The Judicial Conference makes yearly suggestions on legislation to Congress and recommendations on federal court rules to the U.S. Supreme Court. The Supreme Court fashions the rules for federal courts and submits them to Congress for final approval. The attorney general of the United States, by request of the chief justice of the Supreme Court, is required to report to the Judicial Conference on the business of the federal courts. Under the Judicial Conference statute, 28 U.S.C.A. 331, the attorney general's reports must discuss with particularity the progress of cases in which the U.S. government is a party.

The Judicial Conference may offer its opinion on legislation passed by Congress that affects the rules and procedures of the federal courts. For example, in 1990 the Federal Courts Study Commission of the Judicial Conference released a study that was critical of federal legislation on mandatory minimum sentences for criminal defendants. Also in the 1990s, the Judicial Conference publicly opposed federal legislation that limited the right of a criminal defendant to file HABEAS CORPUS petitions in federal court. For persons in prison, habeas corpus petitions are usually the last chance for court review of their criminal conviction.

The Judicial Conference has established committees that specialize in certain topics, including court schedules (known as dockets), court budgets, judicial conduct, and the disclosure of finances by judges and the federal courts. Other committees supervise the support of specialized federal court features, such as the offices of public defenders, probation officers, and magistrates (judicial officers who make decisions on pretrial matters).

Although the power of the Judicial Conference is limited to administrative matters, these matters can be controversial and far reaching. For example, the Judicial Conference has authority over the presence of cameras in federal courtrooms. In 1994 it voted to discontinue a three-year experiment allowing cameras to film civil trials in some federal courts. A majority of the Judicial Conference members expressed a fear that cameras could affect the outcome of a trial. The decision drew criticism from many legal circles, and in March 1995 the Judicial Conference said that it would reconsider its position on the issue. In March 1996 the Conference decided to ban cameras in all federal courts except for federal appeals courts. The Conference allowed each circuit to decide whether it would allow cameras in its appeals courts.

There have been legislative attempts to compel the federal courts to permit cameras

in federal courtrooms. These attempts arose under a bill known as the Sunshine in the Courtroom Act, which was first introduced in Congress in 2001. The Sunshine in the Courtroom Act would effectively open federal courtrooms to television and radio coverage. Although the legislation was reintroduced in Congress several times, as of March 2009 a bill to provide for media coverage of federal court proceedings has yet to become law.

Most states permit some form of electronic coverage of state court proceedings. Under current law, federal courts continue to ban television and radio coverage of federal criminal and civil proceedings at both the trial and appellate levels.

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CROSS REFERENCES

Cameras in Court; Complaint; District Court; Federal Courts; Judicial Administration.

JUDICIAL IMMUNITY

A judge's complete protection from personal liability for exercising judicial functions.

JUDICIAL IMMUNITY protects judges from liability for monetary damages in civil court, for acts they perform pursuant to their judicial function. A judge generally has immunity from civil damages if he or she had jurisdiction over the subject matter in issue. This means that a judge has immunity for acts relating to cases before the court, but not for acts relating to cases beyond the court's reach. For example, a criminal court judge would not have immunity if he or she tried to influence proceedings in a juvenile court.

Some states codify the judicial immunity doctrine in statutes. Most legislatures, including Congress, let court decisions govern the issue.

Judicial immunity is a common-law concept, derived from judicial decisions. It originated in the courts of medieval Europe to discourage persons from attacking a court decision by suing the judge. Losing parties were required instead to take their complaints to an appellate court. The idea of protecting judges from civil damages was derived from this basic tenet and served to solidify the independence of the judiciary. It became widely accepted in the English courts and in the courts of the United States.

Judicial immunity was first recognized by the U.S. Supreme Court in *Randall v. Brigham*, 74 U.S. (7 Wall.) 523, 19 L. Ed. 285 (1868). In *Randall* the Court held that an attorney who had been banned from the PRACTICE OF LAW by a judge could not sue the judge over the disbarment. In its opinion, the Court stated that a judge was not liable for judicial acts unless they were done "maliciously or corruptly."

In *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 20 L. Ed. 646 (1871), the U.S. Supreme Court clarified judicial immunity. Joseph H. Bradley had brought suit seeking civil damages against George P. Fisher, a former justice of the Supreme Court of the District of Columbia. Bradley had been the attorney for John H. Suratt, who was tried in connection with the ASSASSINATION of President ABRAHAM LINCOLN. In Suratt's trial, after Fisher had called a recess, Bradley accosted Fisher "in a rude and insulting manner" and accused Fisher of making insulting comments from the bench. Suratt's trial continued, and the jury was unable to reach a VERDICT.

Immediately after discharging the jury, Fisher ordered from the bench that Bradley's name be stricken from the rolls of attorneys authorized to practice before the Supreme Court of the District of Columbia. Bradley sued Fisher for damages relating to lost work as a

IN FOCUS

Should Judges Have Absolute or Qualified Immunity?

The U.S. Supreme Court has made clear that when judges perform judicial acts within their jurisdiction, they are absolutely immune from money damages lawsuits. When judges act outside their judicial function, such as in supervising their employees, they do not have absolute immunity. The Court's upholding of absolute immunity has troubled some legal commentators, who believe that in appropriate circumstances judges should be held personally accountable for judicial actions that are unlawful.

Defenders of absolute immunity claim that it is required for the benefit of the public, not for the protection of MALICIOUS or corrupt judges. The legitimacy of U.S. courts rests on the public's belief that judges have the freedom to act independently, without fear of the consequences. Absolute immunity provides the buffer needed for a judge to act.

In the adversarial process, one party wins, and the other party loses. Losing parties are inevitably disappointed, and some seek ways of venting their frustration at the legal system. Some file complaints with lawyer discipline boards, alleging ethical misconduct by the opposing party's attorney or their own attorney. Some file complaints with a judicial conduct board, claiming that the trial judge violated a canon of judicial conduct. Though these types of complaints do not result in the relitigation of a lawsuit, they do illustrate the VEXATIOUS LITIGATION that faces attorneys and judges. Allowing parties to sue a judge for a judicial act would invite a torrent of meritless suits that would impede the judicial system.

Defenders of absolute immunity note that a flood of litigation would not be the only consequence of relaxing the immunity standard. They say that once judges became liable for damages suits, self-interest would lead them to avoid making decisions likely to provoke such suits. The resulting overcautiousness and timidity might be hard to detect, but it would impair independent and impartial adjudication.

Judges do make honest mistakes during the course of trial. The law is complex, and judges cannot call a recess of court to research every motion before making a decision. If a judge could be sued for damages, another judge might have to rule that the DEFENDANT judge was liable for injuries due to an erroneous decision or procedural flaw. Having judges judge one another could erode the integrity of the courts and undermine public confidence.

Defenders of absolute immunity also point out that appellate review is a viable remedy for correcting judicial conduct. In addition, if a judge has violated the canons of judicial conduct, judicial conduct boards may issue sanctions, including a recommendation of removal from the bench. A judge can be prosecuted for criminal acts. In some states judges may be impeached, and most state court judges must stand for election periodically. All these options serve as checks on judicial behavior and provide protection to the public.

Those who criticize absolute immunity recognize that judicial independence must be preserved. Nevertheless, they claim that in certain situations the only way to protect the public is to allow personal lawsuits against judges. By totally insulating judges from personal responsibility for their actions, the judicial system allows a small number of judges to escape the consequences of unlawful and outrageous behavior. The public loses respect when it sees a judge "beat the system," while the victim loses the chance to be made whole for the injuries flowing from the judicial act.

These critics believe that a qualified immunity standard would protect judges from meritless lawsuits and guarantee victims of unlawful judicial conduct their opportunity to seek damages. Qualified immunity is a lesser form of immunity that may be granted by a court if the judge demonstrates that the law was not clear on the subject in which the judge's actions occurred. They point out that the executive branch is governed by qualified immunity. There is no indication that the administration of government has ground to a halt, or that the executive branch cannot attract high-quality individuals to government service. A well-articulated qualified immunity standard would allow a lawsuit against a judge to be dismissed if it could be established that the judge was operating within accepted judicial authority.

The critics note that the alternative remedies offered by the defenders of absolute immunity do not address the type of conduct that would be the focus of a PERSONAL INJURY lawsuit against a judge. For example, in *Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978), the judge issued an order to sterilize a teenage girl without the order's ever having been filed with the clerk of court. Because there was no record of a case filing or decision, the order could not be reviewed by an appellate court. The judge could be sanctioned by the judicial conduct board, but that would not compensate the victim of the illegal sterilization. Absolute immunity allowed the court to dismiss the girl's claim because the "judicial act" was one normally performed by a judge and was within the judge's judicial capacity.

Supporters of qualified immunity discount the assumption that it would precipitate a flood of litigation. They maintain that decisions that judges typically make will seldom be litigated, as appellate review will satisfy most litigants. However, in the rare circumstances where a judge abuses her authority and someone is injured, these supporters contend, it is only fair to qualify a judge's personal immunity. They argue that the removal of absolute immunity would, over time, deter judicial abuse: Judges would not be intimidated, but they would be more careful to safeguard the rights of all parties.

Stump v. Sparkman

The U.S. Supreme Court has consistently upheld absolute immunity for judges performing judicial acts, even when those acts violate clearly established judicial procedures. In ***Stump v. Sparkman***, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978), the Court held that an Indiana state judge, who ordered the sterilization of a female minor without observing due process, could not be sued for damages under the federal civil rights statute (42 U.S.C.A. § 1983).

In 1971 Judge Harold D. Sparkman, of the Circuit Court of DeKalb County, Indiana, acted on a petition filed by Ora McFarlin, the mother of 15-year-old Linda Spitler. McFarlin sought to have her daughter sterilized on the ground she was a "somewhat retarded" minor who had been staying out overnight with older men.

Judge Sparkman approved and signed the petition, but the petition had not been filed with the court clerk and the judge had not opened a formal case file. The judge failed to appoint a guardian ad litem for Spitler, and he did not hold a hearing on the matter before authorizing a tubal ligation. Spitler, who did not know what the operation was for, discovered she had been sterilized only after she was married. Spitler, whose married name was Stump, then sued Sparkman.

The Supreme Court ruled that Sparkman was absolutely immune because what he did was "a function normally performed by a judge," and he performed the act in his "judicial capacity." Although he may have violated state laws and procedures, he performed judicial functions that have historically been absolutely immune to civil lawsuits.

In a dissenting opinion, Justice Potter Stewart argued that Sparkman's actions were not absolutely immune simply because he sat in a courtroom, wore a robe, and signed an unlawful order. In Stewart's view the conduct of a judge "surely does not become a judicial act merely on his say so. A judge is not free, like a loose cannon, to inflict indiscriminate damage whenever he announces that he is acting in his judicial capacity."

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result of the order. At trial, Bradley attempted to introduce evidence in his favor, but Fisher's attorney objected to each item, and the judge excluded each item. After three failed attempts to present evidence, the trial court directed the jury to deliver a verdict in favor of Fisher.

On appeal by Bradley, the U.S. Supreme Court affirmed the trial court's decision. Judges could be reached for their MALICIOUS acts, but only through IMPEACHMENT, or removal from office. Thus, the facts of the case were irrelevant. Even if Fisher had exceeded his jurisdiction in single-handedly banning Bradley from the court, Fisher was justified in his actions. According to the Court, "A judge who should pass over in silence an offence of such gravity would soon find himself a subject of pity rather than respect."

Since *Bradley*, the U.S. Supreme Court has identified some exceptions to judicial immunity. Judges do not receive immunity for their administrative decisions, such as in hiring and firing court employees (*Forrester v. White*, 484 U.S. 219, 108 S. Ct. 538, 98 L. Ed. 2d 555 [1988]). Judges also are not immune from declaratory and injunctive relief. These forms of relief differ from monetary relief. Generally they require parties to do or refrain from doing a certain thing. If a judge loses a suit for DECLARATORY JUDGMENT or injunctive relief, he or she may not be forced to pay money damages, but may be forced to pay the court costs and attorneys' fees of the winning party. For example, assume that a judge requires the posting of bail by persons charged in criminal court with offenses for which they cannot be jailed. If a person subjected to this unconstitutional practice files suit against the judge, the judge will not be given judicial immunity and, upon losing the case, will be forced to pay the plaintiff's attorney's fees and court costs. (*Pulliam v. Allen*, 466 U.S. 522, 104 S. Ct. 1970, 80 L. Ed. 2d 565 [1984]).

The Court held in *Pulliam* that a judge could be forced to pay the plaintiff's attorney's fees and court costs under the 1976 CIVIL RIGHTS

Attorney's Fees Awards Act, 42 U.S.C.A. § 1988. Gladys Pulliam, a Virginia state court magistrate, had jailed two men for failure to post bail following their arrest for abusive language and public drunkenness. Under Virginia law, the defendants could not receive a jail sentence if convicted of these offenses. The plaintiffs sued under the federal civil rights act 42 U.S.C.A. § 1983 and obtained an injunction forbidding the judge to require bail for these offenses. The judge was also ordered to pay the defendants $8,000 as reimbursement for their attorneys' fees.

Judges throughout the United States viewed the *Pulliam* decision as a serious ASSAULT on judicial immunity. The Conference of State Chief Justices, the JUDICIAL CONFERENCE OF THE UNITED STATES, the AMERICAN BAR ASSOCIATION, and the American Judges Association lobbied Congress to amend the law and overturn *Pulliam.* Finally, in the Federal Courts Improvement Act of 1996 (Pub. L. No. 104-317, 110 Stat. 3847), Congress inserted language that voided the decision. The amendment prohibits injunctive relief in a § 1983 action against a "judicial officer for an act or omission taken in such officer's judicial capacity" unless "a declaratory decree was violated or declaratory relief was unavailable." In addition, language was added to § 1988 that precludes the award of costs and attorney's fees against judges acting in their official capacity.

Filing a civil COMPLAINT against a judge can be risky for attorneys because the doctrine of judicial immunity is well established. In *Marley v. Wright*, 137 F.R.D. 359 (W.D. Okla. 1991), attorney Frank E. Marley sued two Oklahoma state court judges, Thornton Wright, Jr., and David M. Harbour, their COURT REPORTER, and others. Marley alleged in his complaint that Wright and Harbour had violated his constitutional rights in connection with a custody case concerning Marley's children. The court not only dismissed the case, but also ordered Marley to pay the attorney's fees that Wright and Harbour had incurred in defending the suit. According to the court, Marley's complaint "was not warranted by existing law," and Marley had used the suit "not to define the outer boundaries of judicial immunity but to harass judges and judicial personnel who rendered a decision he did not like."

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JUDICIAL NOTICE

A doctrine of evidence applied by a court that allows the court to recognize and accept the existence of a particular fact commonly known by persons of average intelligence without establishing its existence by admitting evidence in a civil or criminal action.

When a court takes judicial notice of a certain fact, it obviates the need for parties to prove the fact in court. Ordinarily, facts that relate to a case must be presented to the judge or jury through testimony or tangible evidence. However, if each fact in a case had to be proved through such presentation, the simplest case would take weeks to complete. To avoid burdening the judicial system, all legislatures have approved court rules that allow a court to recognize facts that constitute common knowledge without requiring proof from the parties.

On the federal trial court level, judicial notice is recognized in rule 201 of the FEDERAL RULES OF EVIDENCE for U.S. District Courts and Magistrates. Rule 201 provides, in part, that "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

Under rule 201 a trial court must take judicial notice of a well-known fact at the request of one of the parties, if the court is provided with information supporting the fact. A court also has the option to take judicial notice at its discretion, without a request from a party.

Rule 201 further provides that a court may take judicial notice at any time during a proceeding. If a party objects to the taking of judicial notice, the court must give that party an opportunity to be heard on the issue. In a civil jury trial, the court must inform the jury that it must accept the judicially noticed facts in the case as conclusively proved. In a criminal trial by jury, the court must instruct the jury "that it

may, but is not required to, accept as conclusive any fact judicially noticed." All states have statutes that are virtually identical to rule 201.

The most common judicially noticed facts include the location of streets, buildings, and geographic areas; periods of time; business customs; historical events; and federal, state, and INTERNATIONAL LAW. Legislatures also maintain statutes that give courts the power to recognize certain facts in specific situations. For example, in Idaho any document affixed with the official seal of the state public utilities commission must be judicially noticed by all courts (Idaho Code § 61-209 [1996]). In Hawaii, when a commercial vehicle is cited for violating vehicle equipment regulations, a trial court must take judicial notice of the driver's subordinate position if the driver works for a company that owns the vehicle (Haw. Rev. Stat. § 291-37 [1995]).

The danger of judicial notice is that, if abused, it can deprive the fact finder of the opportunity to decide a contestable fact in a case. In *Walker v. Halliburton Services*, 654 So. 2d 365 (La. App. 1995), Johnny Walker fell from a tank truck approximately ten feet to a concrete floor. Walker sought workers' compensation benefits for his injuries, and his claim was denied by the Office of Workers' Compensation.

At the application hearing, the hearing officer stated that it was her experience that a soft-tissue injury heals in six weeks. She then took judicial notice of the fact that a soft-tissue injury heals in six weeks—preventing Walker from contesting that proposition—and disallowed Walker's claim. On appeal the Louisiana COURT OF APPEAL, Third Circuit, reversed the decision and ordered the payment of workers' compensation benefits. According to the court, it was a clear error of law for the hearing officer to take judicial notice of such intricate medical knowledge.

JUDICIAL REVIEW

A court's authority to examine an executive or legislative act and to invalidate that act if it is contrary to constitutional principles.

The power of courts of law to review the actions of the executive and legislative branches is called judicial review. Though judicial review is usually associated with the U.S. Supreme Court, which has ultimate judicial authority, it is a power possessed by most federal and state courts of law in the United States. The concept is an American invention. Prior to the early 1800s, no country in the world gave its judicial branch such authority.

In the United States, the supremacy of national law is established by Article VI, Clause 2, of the U.S. Constitution. Called the SUPREMACY CLAUSE, it states that "This Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land." It goes on to say that, "judges in every state shall be bound thereby." This means that state laws may not violate the U.S. constitution and that all state courts must uphold the national law. State courts uphold the national law through judicial review.

Through judicial review, state courts determine whether or not state executive acts or state statutes are valid. They base such rulings on the principle that a state law that violates the U.S. constitution is invalid. They also decide the constitutionality of state laws under state constitutions. If, however, state constitutions contradict the U.S. Constitution, or any other national statute, the state constitution must yield. The highest state court to decide such issues is the state supreme court.

While judicial review of state laws is clearly outlined in the supremacy clause, the Framers of the U.S. Constitution did not resolve the question of whether the federal courts should have this power over congressional and executive acts. During the early years of the Republic, the Supreme Court upheld congressional acts, which implied the power of judicial review. But the key question was whether the Court had the power to strike down an act of Congress.

In 1803 the issue was settled in *MARBURY V. MADISON*, 5 U.S. (1 Cranch) 137, 2 L. Ed. 60, when the Supreme Court, for the first time, ruled an act of Congress unconstitutional. In *Marbury*, Chief Justice JOHN MARSHALL reasoned that since it is the duty of a court in a lawsuit to declare the law, and since the Constitution is the supreme LAW OF THE LAND, where a rule of statutory law conflicts with a rule of the Constitution, then the law of the Constitution must prevail. Marshall asserted that it is "emphatically the province and duty of the judicial department, to say what the law is."

Having established the power of judicial review, the Supreme Court applied it only once prior to the Civil War, in 1857, ruling the

MISSOURI COMPROMISE OF 1820 unconstitutionalin *DRED SCOTT V. SANDFORD*, 60 U.S. (19 How.) 393, 15 L. Ed. 691. During the same period, the Court invalidated several state laws that came in conflict with the Constitution. In M'Culloch v. Maryland, 17 U.S. 316, 4 L. Ed. 579 (1819), the Court invalidated a state's attempt to tax a branch of the BANK OF THE UNITED STATES. In GIBBONS V. OGDEN, 22 U.S. 1, 6 L. Ed. 23 (1824), the Court struck down a New York law granting a monopoly to a steamboat company, saying that the state law conflicted with a federal law granting a license to another company.

In addition to invalidating state laws, the Marshall Court established the authority to overrule decisions of the highest state courts. In Martin v. Hunter's Lessee, 14 U.S. 304, 4 L. Ed. 97 (1816), the Court referred to the supremacy clause to assert that its appellate power extended to state courts.

Following the Civil War, the Supreme Court grew concerned that the recently-passed FOURTEENTH AMENDMENT would give the federal government too much power over state governments and individual rights. Therefore, it used the power of judicial review to strike down federal CIVIL RIGHTS laws that sought to address racial discrimination in the former Confederate states. Beginning in 1890, the Court became embroiled in political controversy when it exercised its power of judicial review to limit government regulation of business. In *Chicago, Milwaukee, & St. Paul Railroad Co. v. Minnesota*, 134 U.S. 418, 10 S. Ct. 462, 33 L. Ed. 970 (1890), the Court struck down a state law establishing a commission to set railroad rates. This case was the first of many where the Court applied the doctrine of SUBSTANTIVE DUE PROCESS to invalidate state and federal legislation that regulated business. Substantive due process was a vague concept that required legislation to be fair, reasonable, and just in its content.

Through the early 1900s, the Court came under attack from Populists and Progressives for its desire to insulate capitalism from government intervention. Unmoved by its critics, the Court proceeded to invalidate a federal income tax (Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 15 S. Ct. 673, 39 L. Ed. 759 [1895]), limit the scope of the SHERMAN ANTI-TRUST ACT (*United States v. E. C. Knight Co.*, 156 U.S. 1, 15 S. Ct. 249, 39 L. Ed. 325 [1895]), and forbid states to regulate working hours (*LOCHNER V. NEW YORK*, 198 U.S. 45, 25 S. Ct. 539, 49 L. Ed. 937 [1905]).

The Supreme Court's use of substantive due process brought charges of "judicial activism," which means that in determining whether laws would meet constitutional muster, the Court was accused of acting more as a legislative body than as a judicial body. Justice Oliver Wendell Holmes Jr., in his famous dissenting opinion in *Lochner*, argued for "judicial restraint," cautioning the Court that it was usurping the function of the legislature.

Despite Holmes's warning the Court continued to strike down laws dealing with economic regulation into the 1930s. In 1932, the United States, in the midst of the Great Depression, elected FRANKLIN D. ROOSEVELT president. Roosevelt immediately began to implement his NEW DEAL program, which was based on the federal government's aggressive regulation of the national economy. The Supreme Court used its power of judicial review to invalidate eight major pieces of New Deal legislation.

Roosevelt, angry at the conservative justices for blocking his reforms, proposed legislation that would add new appointees to the Court—appointees that would create a liberal majority. This "court-packing" plan aroused bipartisan opposition and ultimately failed. But the Court may have gotten Roosevelt's message, for in 1937, it made an abrupt turnabout: a majority of the Court abandoned the substantive due process doctrine and voted to uphold the WAGNER ACT, which guaranteed to industrial workers the right to unionize and bargain collectively (*NATIONAL LABOR RELATIONS BOARD V. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 57 S. Ct. 615, 81 L. Ed. 893 [1937]).

With this decision the Court ceased to interpret the Constitution as a barrier to social and economic legislation. The Court subsequently upheld congressional legislation that affected labor relations, agricultural production, and social welfare. It also exercised judicial restraint with respect to state laws regulating economic activity.

Beginning in the 1950s, the Supreme Court exercised its judicial review power in cases involving civil rights and civil liberties. During the tenure of Chief Justice EARL WARREN, from 1953 to 1969, the Court declared federal statutes unconstitutional in whole or in part in 25 cases,

most of the decisions involving civil liberties. The Warren Court's decision in *BROWN V. BOARD OF EDUCATION*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), however, invalidated state laws that mandated racially segregated public schools.

The Supreme Court became increasingly conservative in the 1970s. Yet, in 1973, under Chief Justice WARREN E. BURGER, it invalidated state laws prohibiting ABORTION in *ROE V. WADE*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147. Since the elevation of WILLIAM H. REHNQUIST to chief justice in 1986, the Court has continued its movement to the right, although it has not retreated from most of the protections it recognized under Warren in the realm of civil rights and civil liberties.

The exercise of judicial review is subject to important rules of judicial self-restraint, which restrict the Supreme Court, and state courts as well, from extending its power. The Supreme Court will hear only cases or controversies, actual live disputes between adversary parties who are asserting valuable legal rights. This means the Court cannot issue advisory opinions on legislation. In addition, a party bringing suit must have standing (a direct stake in the outcome) in order to challenge a statute.

The most important rule of judicial restraint is that statutes are presumptively valid, which means that judges assume legislators did not intend to violate the Constitution. It follows that the BURDEN OF PROOF is on the party that raises the issue of unconstitutionality. In addition, if a court can construe a disputed statute in a manner that allows it to remain intact without tampering with the meaning of the words or if a court can decide a case on nonconstitutional grounds, these courses are to be preferred. Finally, a court will not sit in judgment of the motives or wisdom of legislators, nor will it hold a statute invalid merely because it is deemed to be unwise or undemocratic.

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CROSS REFERENCES

Due Process of Law; Separation of Powers; Supreme Court of the United States.

JUDICIAL SALE

The transfer of title to and possession of a debtor's property to another in exchange for a price determined in proceedings that are conducted under a judgment or an order of court by an officer duly appointed and commissioned to do so.

A judicial sale is a method plaintiffs use to enforce a judgment. When a PLAINTIFF wins a judgment against a DEFENDANT in civil court, and the defendant does not pay the judgment, the plaintiff can force the sale of the defendant's property until the judgment is satisfied. The plaintiff forces the sale by filing in court for an execution on property, which is a seizure of property by the court for the purpose of selling the property.

Judicial sales are regulated by state and federal statute. In Alabama, for example, the judicial sale process begins when a judgment remains unpaid ninety days after it is placed on the record by the court (Ala. Code § 6-9-21 [1995]). The plaintiff must bring an order mandating payment of the judgment and court costs to the county where the defendant's property is located. This order is called a writ of execution, and it is issued by the trial court. A writ of execution identifies the amount of the judgment, interest, and court costs that the defendant owes the plaintiff.

Generally, a writ of execution may be levied against any real property or PERSONAL PROPERTY of the defendant. The plaintiff must file the writ of execution with the probate judge in the county where the defendant's property is located. The plaintiff must also give notice of the execution on the defendant's property to the defendant. Once the writ is filed, the plaintiff has a LIEN on the defendant's property. A lien gives the plaintiff a legally recognized ownership interest in the defendant's property, equal to the amount of the judgment.

Once the plaintiff has obtained a lien on the defendant's property, the judicial sale can begin. The process typically must be carried out within a fixed time period, such as within ninety days after the writ of execution is issued. The sheriff's office in the county where the property is located is responsible for levying, or seizing, the property and for conducting the sale of the property.

The sale of real property may take place at the courthouse. If the property that the plaintiff seeks is perishable and in danger of waste or decay, the sale may occur at some other time and place.

A defendant can avoid a judicial sale after a writ of execution is issued, by paying the judgment, interest, and court costs in full. If the defendant appeals the judgment to a higher court, the defendant may postpone the judicial sale by posting a bond to secure the debt during the appeals process. If the defendant does not plan to appeal, and the levying officer is about to seize personal property, the defendant may be able to keep the property until the day of sale if the defendant gives the levying officer a bond made payable to the plaintiff for a certain amount, such as twice the amount in the writ of execution.

Generally, judicial sales are the last resort for a plaintiff trying to collect on a judgment. A defendant who owns or possesses valuable property is usually able to satisfy a judgment in civil court by leveraging the property, or using it to borrow money to pay the judgment.

JUDICIAL WRITS

Orders issued by a judge in the English courts after a lawsuit had begun.

An ORIGINAL WRIT, issued out of the Chancery, was the proper document for starting a lawsuit in England for hundreds of years, but courts could issue judicial writs during the course of a proceeding or to give effect to their orders after the lawsuit had commenced. Unlike original writs, judicial writs were issued under the private seal of the courts rather than the king's great seal, and they were sent out in the name of the chief judge of the court hearing the case rather than in the king's name. The capias was one form of a judicial writ.

JUDICIARY

The judiciary is the branch of government that is endowed with the authority to interpret and apply the law, adjudicate legal disputes, and otherwise administer justice.

The U.S. judiciary comprises a system of state and federal courts, tribunals, and administrative bodies, as well as the judges and other judicial officials who preside over them.

Every society in human history has confronted the question of how to resolve disputes among its members. Many early societies chose a private system of revenge for dispute resolution. As civilization gradually evolved, communities began designating individuals to resolve disputes in accordance with established norms and customs. These individuals were usually leaders who were expected to exercise their judgment in an impartial manner.

The origins of JUDICIAL ACTION, judicial power, and judicial process may be traced to the first communities that relied on neutral third parties to resolve legal disputes. *Judicial action* is any action taken by a court or other judicial body to interpret, apply, or declare what the law is on a particular issue during a legal proceeding. It is also the action taken by a judicial body to settle a legal dispute by issuing an opinion, order, decree, or judgment. *Judicial power* is the authority of a court to hear a particular lawsuit or legal dispute and take judicial action with regard to it. *Judicial process* is the procedures by which a court takes judicial action or exercises its judicial power.

Ancient Greece, an early society in Western civilization, evolving from about the sixth century to the second century b.c., employed a combination of judicial procedures. Greek rulers, known as *arkhons*, were empowered to hear a variety of disputes, as was the *agora*, a group of respected elders in the community. A court known as the *Areopagus* heard MURDER cases, but direct retaliation by private citizens was still permitted in many civil disputes. The judicial powers of these institutions were gradually replaced by the *Ekklesia*, an assembly of six thousand jurors that was divided into smaller panels to hear particular cases.

Juries played an integral role in the development of the English judicial system. As more legal disputes were submitted to juries for resolution, this system became more self-conscious. Concerns were expressed that both

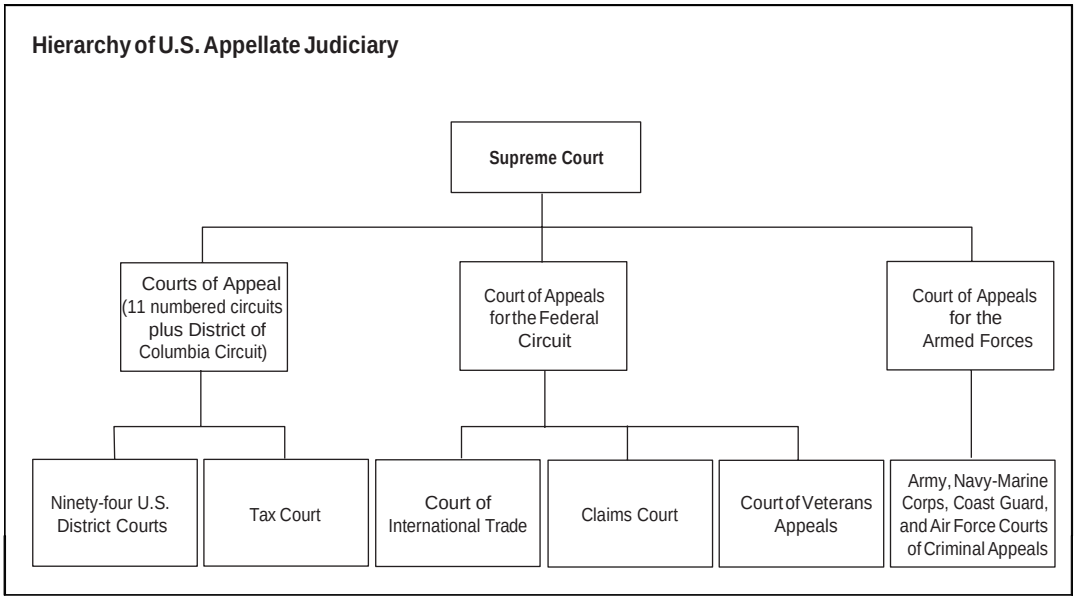

ILLUSTRATION BY GGS CREATIVE RESOURCES. REPRODUCED BY PERMISSION OF GALE, A PART OF CENGAGE LEARNING.

judges and juries were rendering biased decisions based on irrelevant and untrustworthy evidence. Litigants complained that trial procedures were haphazard, arbitrary, and unfair. Losing parties sought effective remedies to redress erroneous decisions made at the trial court level. Each of these concerns has manifested itself in the modern judicial system of the United States.

The blueprints for the U.S. judiciary were laid out in 1789. During that year the U.S. Constitution was formally adopted by the states. Article III of the Constitution delineates the general structure of the federal judicial system, including the powers and obligations of federal courts. The JUDICIARY ACT OF 1789 (1 Stat. 73 [codified as amended in 28 U.S.C.A.]) explains many details of federal judicial power that were not addressed by the Constitution. The blueprints for the state judicial systems were created similarly by state constitutional and statutory provisions.

The U.S. judicial system has three principal characteristics: It is part of a federalist system of government, it has a specific role under the federal separation-of-powers doctrine, and it is organized in a hierarchical fashion.

Federalism

The judiciary is part of a federalist system in which the state and federal governments share authority over legal matters arising within their geographic boundaries. In some instances, both state and federal courts have the power to hear a legal dispute that arises from a single set of circumstances. For example, four Los Angeles police officers who were accused of participating in the 1991 beating of speeding motorist RODNEY G. KING faced prosecution for excessive use of force in both state and federal court. In other instances, a state or federal court has exclusive jurisdiction over a particular legal matter. For example, state courts typically have exclusive jurisdiction over matrimonial law, and federal courts have exclusive jurisdiction over BANKRUPTCY law.

Separation of Powers

Under the separation-of-powers doctrine, the judiciary shares power with the executive and legislative branches of government at both the state and federal levels. The judiciary is delegated the duty of interpreting and applying the laws that are passed by the legislature and enforced by the executive branch.

Article I of the U.S. Constitution grants Congress its lawmaking power, and Article II authorizes the president to sign and veto legislation and to execute laws that are enacted. Article III grants the federal judiciary the power to adjudicate lawsuits that arise under the Constitution, congressional law, and treaties with foreign countries.

The Politicizing of American Jurisprudence

An old saying goes, "A judge is a lawyer who knew a governor (or senator or president)." The inference is unavoidable: Judges are political creatures. From many of the nation's law professors to leading members of its foremost bar association, some legal experts think this assertion is regrettably all too true.

Only federal judges and a handful of state judges are appointed for life, barring impeachment. In all other states and in local governments, most judges are elected by popular vote for a specific term. Voters tend to elect persons who share their views. The same is true for most gubernatorial appointments, although in many states this tendency is tempered by senatorial confirmation. Inescapably, the development of platforms that represent the most popular, prevailing, or promising views is a political process.

In the words of John Adams's Massachusetts constitution, it has always been the desire to make judges "as free, impartial and independent as the lot of humanity will admit." In a political system in which party politics are defined by social issues and in which jurisprudence affects those issues. However, party alignment of judges seems inevitable, either by default or by declaration. The extent is arguable, but few would deny that judges assume the bench based on how others perceive they will run the court: conservatively or liberally.

Ostensible checks and balances exist, of course. All judges are expected to follow ethical standards requiring disinterested and unbiased opinions, which most do. Most states have a code of judicial conduct and/or ethics for this purpose, generally fashioned from that of the American Bar Association (ABA). These codes proscribe many instances of campaign conduct for prospective and current judges. Judges cannot personally solicit or accept campaign funds and often are prohibited from identifying themselves with any political party. Typically, they must run on a non-partisan ticket.

But nothing prevents political action committees (PACs) from making campaign contributions to judges. Some scoff at the imposition of limits. "If PACs are limited, people go out and create more PACs," explained Dick Wilcox, president of the Business and Industry Political Education Committee in Mississippi. "If wealthy individuals are restricted, they give money to their secretaries, wives, or children to contribute." Contributions add up: Michigan spent $16 million on judicial elections in 2000 alone. In Georgia in 2002, races for two Supreme Court seats garnered more than $700,000.

Electing judges, however, is unnecessary. As an alternative, some point to the pioneering Missouri system. Under this system, a governor appoints all state trial and appellate judges with the advice and consent of the legislature. Still another variation seeks to further depoliticize such choices by requiring a governor to select among nominees submitted by a selection panel or special nominating committee.

Support for reform is growing. The American Bar Association (ABA) has called for a sweeping overhaul of the current state system. In 2003 the ABA Commission on the 21st Century Judiciary warned that partisanship over the courts was escalating to crisis levels. Among 23 recommendations, the commission called for limiting judges to service of either one long term or until a specific age, without eligibility for retention or reelection. Such limits are needed to "inoculate America's courts against the toxic effects of money, partisanship and narrow interests," the commission declared.

Advocates of reform say it may cure other ills and weaknesses, too. Reform might eliminate so-called negative campaigning, which may create perceptions among voters that justices are "bought" by special interests. Moreover, judges may lose independence out of fear that certain opinions will be used against them in negative campaign ads.

Another blemish that might be cured is that of real or perceived lawyer lobbying. For years, attorneys—particularly plaintiffs' lawyers—have outspent the largest oil and automotive companies in judicial campaign contributions. The ABA has spoken out sharply against attorneys contributing to campaigns of judges before whom they do frequent business or from whom they wish to gain court-appointed business. Yet just like other campaign contributors, attorneys are exercising their speech

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rights under the First Amendment. However, the Supreme Court in *Caperton v. Massey* (__U.S._, 129 S. Ct. 2252 [2009]) addressed campaign contributions and the duty of a judge to recuse from decisions involving contributors. The court stated:

"We conclude that there is a serious risk of actual bias—based on objective and reasonable perceptions—when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent."

Concerns about politicization of the judiciary soared during the unusual 2000 presidential election. When Florida circuit judge Nikki Ann Clark, an African American and a Democrat, was assigned one of the election cases seeking to invalidate as many as 15,000 absentee ballots from Florida's Seminole County, attorneys for candidate George W. Bush requested that she recuse herself from the case. Just weeks before, Bush's brother, Republican Florida governor Jeb Bush, had bypassed her for a state appellate court vacancy. She refused to recuse herself, issuing a decision unfavorable to Bush and favorable to Florida's African American voters. After her decision was upheld by both the appellate court and the Florida Supreme Court, critics complained that their justices had been appointed by Democratic governors.

Both sides, in fact, found much to complain about. After a sharply divided U.S. Supreme Court reversed the Florida Supreme Court and halted the manual recount of votes (*Bush v. Gore*, 531 U.S. 98, 121 S. Ct. 525, 148 L. Ed. 2d 388 [U.S. 2000]), critics of the decision scathingly denounced it as politically motivated. In fact, 554 U.S. law professors at 120 American law schools took out an ad in the *New York Times* criticizing the majority for "acting as political proponents for candidate Bush, not as judges."

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American Bar Association; Code of Judicial Conduct; Elections; Term Limits

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Federal judges, including Supreme Court justices, are not elected to office. Instead, they are appointed to office by the PRESIDENT OF THE UNITED STATES with the ADVICE AND CONSENT of the Senate. Once appointed, federal judges hold office for life, unless they resign or are impeached for "Treason, Bribery, or other High Crimes and Misdemeanors" (U.S. Const. art. II, § 4).

The lifetime appointment of federal judges is controversial. On one hand, the federal judiciary runs the risk of growing out of touch with popular sentiment because it is being immunized from the electorate. On the other hand, it is considered necessary for the judiciary to remain independent of popular will so that judges will decide cases according to legal principles, not political considerations.

In many states, judges are elected to office. Nonetheless, each state constitution similarly delegates powers among the three branches of government. Accordingly, judges are still expected to decide cases based on the law, not the political considerations that the executive and legislative branches may take into account in executing their duties.

Hierarchy

The U.S. judiciary is a hierarchical system of trial and appellate courts at both the state and federal levels. In general, a lawsuit is originally filed with a trial court that hears the suit and determines its merits. Parties aggrieved by a final judgment have the right to appeal the decision. They do so by asking an appellate court to review the decision of a trial court.

The structure of state court systems varies by state, but four levels generally can be identified: minor courts, major trial courts, intermediate appellate courts, and state supreme courts. Minor courts handle the least serious cases. For example, municipal courts handle city ordinance violations, such as speeding tickets and parking violations. Cases that involve state constitutional issues, state statutes, and common law are dealt with by major trial courts. For example, FELONY cases, such as murder or RAPE, would be handled in a major trial court. Trial courts are called by different names in different states. For example, in Pennsylvania they are called courts of COMMON PLEAS.

Intermediate appellate courts, called courts of appeals, review cases that have been decided by trial courts. They do not hear new evidence; they decide whether the lower court (the trial court) correctly applied the law in the case. State supreme courts review cases that deal with state law. The decision of the court is final since the state supreme court is the ultimate arbiter of state laws and the state constitution. Supreme courts are called by various names depending on the state. For example, West Virginia calls its highest court the Supreme Court of Appeals.

Federal cases, including civil and criminal, are handled by federal district courts. There are 94 district courts, with at least one in each state, as well as a district court for the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands. The number of judgeships appointed to each district is laid out in Title 28, Section 133 of the U.S. CODE, which is a compilation of the permanent laws of the United States.

The 94 districts are divided into 12 regional circuits. Each of these circuits has a U.S. court of appeals, also called a CIRCUIT COURT. U.S. COURTS OF APPEALS were created by the Evarts Act of 1891 (28 U.S.C.A. § 43); the central location of each court is determined by statute (28 U.S.C.A. § 41). Each federal appellate court has jurisdiction over a certain geographic area and may hear appeals only from federal district courts within that jurisdiction. The Court of Appeals for the Federal Circuit, however, has nationwide jurisdiction to handle certain kinds of cases, including patent cases and those that involve trade with other countries.

The Supreme Court is the nation's highest appellate court. It is sometimes called the "court of last resort" because once the Court reviews a case and renders a final judgment, further appeals cannot be made. The nine justices who sit on the Supreme Court review cases that begin at either the federal or state level. These cases usually focus on important issues involving the U.S. Constitution and federal law. The Supreme Court receives its authority from Article III, Section 1, of the U.S. Constitution, which states that "[t]he 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."

Special Courts Not all lawsuits begin in an ordinary court. Both the state and federal governments have established SPECIAL COURTS that are expressly designated to hear specific types of cases. For example, at the federal level, the U.S. Court of International Trade handles cases involving foreign business dealings, and the U.S. TAX COURT handles disputes between taxpayers and the INTERNAL REVENUE SERVICE (IRS). Examples at the state level include special courts that hear cases involving juveniles (i.e., juvenile court) or cases involving domestic issues (i.e., family courts). Specialized courts have also been created to hear appeals. For example, the Court of Military Appeals was established in 1950 to review COURT-MARTIAL decisions.

Alternative Dispute Resolution and Administrative Agencies In certain areas of law, litigants are prohibited from beginning a lawsuit in an ordinary trial court unless they first exhaust other methods of dispute resolution through an administrative body. Since the mid-1930s, state and federal governments have created elaborate administrative systems to dispose of certain legal claims before a lawsuit may ever be filed. For example, at the federal level, administrative agencies have been created to oversee a number of disputes involving labor law, ENVIRONMENTAL LAW, ANTITRUST LAW, employment discrimination, SECURITIES transactions, and national transportation.

Administrative agencies are created by statute, and legislatures may prescribe the qualifications for administrative officials, including administrative law judges, who are appointed by the executive branch; courts of law; and heads of government departments. These agencies are charged with the responsibility of establishing, developing, evaluating, and

applying policy over a given area of law. The body of rules, principles, and regulations promulgated by such agencies and their officials is known as *administrative law*.

Laws created by state and federal administrative bodies, including adjudicative bodies, are considered no less authoritative than laws enacted by legislatures, decreed by the executive branch, or issued by the judiciary. However, litigants who first exhaust their administrative remedies through the appropriate agency and are dissatisfied with a decision rendered by an administrative law judge may appeal the decision to an ordinary court of law.

State and federal governments have passed formal rules that set forth the procedures that administrative bodies must follow. The rules governing federal ADMINISTRATIVE ADJUDICATION are provided in the Administrative Procedure Act (5 U.S.C.A. § 551 et seq. [1988]).

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Administrative Law and Procedure; Alternative Dispute Resolution; Appellate Advocacy; Code of Judicial Conduct; Court of Appeal; Court of Claims; Court Opinion; Discretion in Decision Making; Federal Courts; Federalism; Judicial Act of 1789; Judicial Review; Jury; Original Jurisdiction; Separation of Powers; State Courts.

JUDICIARY ACT OF 1789

The JUDICIARY ACT OF 1789 established the lower federal courts. Under Article III, Section 1, of the U.S. Constitution, "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." In the Judiciary Act, the first Congress created federal trial courts and federal appeals courts to comply with this provision.

The first Congress engaged in considerable debate over the Judiciary Act. This was not surprising: the Constitutional Convention, which had ended a year and a half earlier, had revealed a deep division between Federalists and Anti-Federalists. Federalists promoted federal powers to protect against local bias and ensure federal supremacy. Anti-Federalists opposed a strong federal government and preferred to leave as much power as possible to the states. Although the debate over the Judiciary Act was not conducted entirely by Federalists and Anti-Federalists, these groups represented the opposing viewpoints.

Many concessions were made to Anti-Federalists in the Constitution. However, the ratification of the Constitution was a victory for Federalists because it created the potential for considerable federal powers. The bill for the Judiciary Act—the first bill to be considered in the first Congress—provided another opportunity for Anti-Federalists to present their arguments against strong federal powers.

On April 7, 1789, the Senate ordered itself to create a committee to draft a bill organizing a federal judiciary. By the end of May, a committee led by OLIVER ELLSWORTH, of Connecticut, WILLIAM PATERSON, of New Jersey, and Caleb Strong, of Massachusetts, had devised a detailed, complex proposal. The committee envisioned a small, unintrusive federal judiciary with exacting jurisdictional requirements. This meant that a case would have to have certain characteristics before it could be heard by a federal court. Remembering criticisms made by the Anti-Federalists at the Constitutional Convention, the committee was careful to avoid giving the federal courts too much authority.

Despite the restrictions on jurisdiction, Anti-Federalists opposed the bill on the grounds that a federal judiciary in any form would deprive states of the right to exercise their own judicial powers. They argued that state courts were more than capable of deciding federal issues. Furthermore, the provision in Article III, Section 1, of the Constitution did not require Congress to create lower federal courts: it merely suggested that Congress do so.

The Anti-Federalists, led by Richard Henry Lee and William Grayson, both of Virginia, submitted amendments to limit the scope of the act. Samuel Livermore, a congressman from New Hampshire and an Anti-Federalist, moved the House to limit the jurisdiction of inferior federal courts to questions of admiralty. Lee did the same in the Senate. Another proposal consisted of creating no lower federal courts and expanding the jurisdiction of the Supreme Court. All the amendments were voted down. Senator William Maclay, of Pennsylvania, wrote

in his diary, "I opposed this bill from the beginning.... The constitution is meant to swallow all the state constitutions, by degrees; and this to swallow, by degrees, all the State judiciaries" (Clinton 1986, 1531).

The Federalists, led by JAMES MADISON, of Virginia, insisted that a reasonable reading of Article III, Section 1, required Congress to establish lower federal courts. According to the Federalists, federal courts were necessary to ensure the supremacy of federal law. The supremacy of federal law over state law had, after all, been established in Article VI of the Constitution, which stated, in part, that "[t]his Constitution, and the Laws of the United States ... shall be the supreme Law of the Land."

The Federalists argued further that federal courts provided a venue that would be less susceptible to bias than that of state courts. The Federalists declared that several types of cases were appropriate only in federal court, including cases involving disputes between states; aliens, or noncitizens; and crimes against the United States.

Under the proposed act, federal juries would comprise persons from all over the region, decreasing the potential for the jury bias that can exist in closely knit state courts. Also, federal judges would have no allegiance to any particular state because they would have judicial responsibility for several states at once, and thus would be less prone to bias than were state judges.

Eventually, the Federalists won enough support to pass the act. The House approved the bill submitted by the Senate without a recorded vote, and President GEORGE WASHINGTON signed the act into law on September 24, 1789.

The act established two sets of federal courts to operate below the U.S. Supreme Court. On one level, the act created 13 federal districts. Each of these districts contained a federal trial court that had jurisdiction over minor criminal cases, admiralty and maritime cases, and civil actions on federal matters.

On another level, the act created three federal circuit courts. The circuit courts were given trial court jurisdiction over serious criminal cases and three categories of civil cases: cases where the United States was a PLAINTIFF; cases where at least one of the parties was alien to the United States; and cases between parties of different states, or "diversity" cases, if the amount at issue exceeded $500. CIRCUIT COURT jurisdiction over diversity cases was made concurrent with state court jurisdiction. This meant that a federal trial was not mandatory, and a plaintiff could sue in either a state or federal court. Also, if a DEFENDANT from another state was being sued in state court for more than $500, she or he could have the case moved to the federal circuit court.

Each of the circuit courts comprised a federal district court judge and two Supreme Court justices. This composition was a concession to Anti-Federalists. The general idea was that requiring Supreme Court Justices to sit on circuit courts, or "ride circuit," would force them to keep in touch with local concerns. Theoretically, this would prevent the development of the elite judicial aristocracy feared by the Anti-Federalists.

The Judiciary Act also identified the precise jurisdiction of the Supreme Court: The Supreme Court could hear appeals from the federal district and circuit courts. The Supreme Court could also hear appeals from state courts in cases involving federal treaties or statutes, state statutes that were repugnant to the federal Constitution or to federal laws or treaties, and the interpretation of any clause of the Constitution or of federal laws or treaties. In any case, the decision of a state court would be reviewed by the Supreme Court only if it was against federal interests.

The act gave the Supreme Court trial court jurisdiction over controversies between two or more states and between a state and citizens of another state. The Supreme Court was also given trial court jurisdiction to hear cases against ambassadors, public ministers, and consuls or their domestics, with the adjunct that district courts could also hear cases against consuls or vice consuls. (Consuls and vice consuls were government officers living in another country and responsible for the promotion of U.S. business in that country.)

The Judiciary Act fixed the number of justices on the U.S. Supreme Court at six. As the nation grew in size, new circuits were added to the original three, and justices were added to the court along with the circuits. By 1863, the number of justices on the Supreme Court had grown to ten. In 1866 Congress reduced the number of justices to seven. In 1869 the figure was set at nine, where it has remained.

In many sections of the act, federal trial court jurisdiction was made concurrent with

state court jurisdiction. This meant that federal courts did not have exclusive jurisdiction over many matters involving federal law. One notable exception was that the federal courts were given exclusive jurisdiction to hear cases involving prosecution for the violation of federal criminal laws.

The Judiciary Act did not provide for FEDERAL QUESTION jurisdiction. That is, it did not grant federal courts broad authority to hear all cases that arose under the Constitution or federal law. This may have been because no federal laws were on the books at the time the act was established. Whether intentionally or owing to a lack of foresight, Congress chose to identify in the first Judiciary Act the specific cases that could be heard in federal court. Congress did pass a statute authorizing federal question jurisdiction in 1875. However, to this day, Congress usually grants federal court jurisdiction over new laws in a separate statute or clause.

The creators of the Judiciary Act understood it to be a work-in-progress. On the night before its final passage, Madison, an ardent proponent of the act, wrote that it was "defective both in its general structure, and many of its particular regulations" (Clinton 1986, 1539).

The structure of the federal judiciary has changed dramatically since the passage of the first Judiciary Act. The federal judiciary is now more streamlined. The federal district courts handle all federal trials. The circuit courts are now called U.S. COURTS OF APPEALS, and they are exclusively appeals courts: they no longer have trial court jurisdiction over any cases. Supreme Court justices no longer have to ride circuit. Despite these changes, the Judiciary Act's idea of creating two levels of federal courts beneath the Supreme Court has remained intact.

The act's concern with establishing limits to federal court jurisdiction now seems quaint. In the more than two centuries since the passage of the act, statutes passed by Congress and decisions issued by the Supreme Court concerning the jurisdiction of federal courts have effectively expanded the reach of federal courts. Federal courts have also increased in number: There are now 11 federal circuits, each containing an appeals court and several federal district courts.

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Diversity of Citizenship; Supreme Court of the United States.

JUDICIARY ACT OF 1801

See MIDNIGHT JUDGES.

JUNIOR

Younger; subsequently born or created; later in rank, tenure, preference, or position.

A junior LIEN is one that is subordinate in rank to another prior lien. This means that the junior lien will be paid off only after the prior lien has been satisfied.

When used in a proper name, junior or its abbreviation, Jr., is merely descriptive and not part of the individual's legal name. The absence of the term at the end of a name has no legal consequence. A signature that omits the description is still valid.

JUNK BOND

A security issued by a corporation that is considered to offer a high risk to bondholders.

Junk bond is the popular name for high-risk bonds offered by corporations. A bond is a certificate or some other evidence of a debt. In the world of corporate finance, a corporation may sell a bond in exchange for cash. The bond

contains a promise to repay its purchaser at a certain rate of return, called a yield. A bond is not an equity investment in the corporation; it is debt of the corporation.

A corporate bond is essentially a loan to a corporation. The loan may be secured by a LIEN or mortgage on the corporation's property as security for repayment.

To determine the level of the default risk for potential bondholders, financial experts analyze corporations and rate them on a number of factors, including the nature of their business, their financial holdings, their employees, and the length of their existence. The higher the risk for bondholders, the lower the risk rating given the corporation.

Because their ventures are considered risky, low-rated corporations must offer bond yields that are higher than those of high-rated corporations. High-rated corporations have less need for income from bonds, so they do not need to offer high yields. Bonds from these companies are called investment-grade bonds. Low-rated corporations have the need for bond income, so they offer high-yield bonds. These high-yield bonds are junk bonds.

When a corporation fails, bondholders may lose all or part of their investment if the corporation has declared BANKRUPTCY or has no assets. This possibility is more real for junk bonds because they are, by definition, issued by unproven or unhealthy corporations.

For some persons, the high yield of a junk bond can be worth the increased risk of default. Junk bonds can increase in value if the corporation's rating is upgraded by private bond-rating firms. Junk bonds are also favored by some persons precisely because they contribute capital to young or struggling corporations. Whether to buy a junk bond depends on the investor: Conservative investors do not favor them, but speculators and others seeking a quick profit find them attractive.

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JURAL

The principles of natural and positive rights recognized by law.

Jural pertains to the rights and obligations sanctioned and governed by POSITIVE LAW or that law which is enacted by proper authority. Jural doctrines are founded upon fundamental rules and protect essential rights and duties.

Jural principles are not the same as moral principles. Moral doctrines encompass the entire range of ethics or the science of behavior. Jural doctrines include only those areas of moral conduct that are recognized by law. Jural denotes the state or an organized political society.

JURAT

The certificate of an officer that a written instrument was sworn to by the individual who signed it.

Jurat is derived from *jurare*, Latin for "to swear." It is proof that an oath was taken before an administering officer, such as a notary. In an affidavit, a jurat is the clause at the end of the document stating the date, place, and name of the person before whom it was sworn.

JURIDICAL

Pertaining to the administration of justice or to the office of a judge.

A *juridical act* is one that conforms to the laws and the rules of court. A *juridical day* is one on which the courts are in session.

JURIMETRICS

The study of law and science.

Used primarily in academia to mean a strictly empirical approach to the law, the term *jurimetrics* originated in the 1960s as the use of computers in law practice began to revolutionize the areas of legal research, evidence analysis, and data management. A neologism whose roots suggest jurisprudence and measurement, it was popularized by the AMERICAN BAR ASSOCIATION (ABA), whose quarterly *Jurimetrics Journal of Law, Science, and Technology* is a widely respected publication with an international focus.

Although the effect of science on law has a long history, modern developments date only to the second half of the twentieth century.

Precipitating the rise of the contemporary legal practice—which relies heavily on computers to research relevant law and, in some cases, to analyze evidence—was an emphasis on logical reasoning. Leading the way in this area was the ABA, which in 1959 began publishing in its journal *Modern Uses of Logic in Law* papers arguing in favor of applying a strict, systematic approach to the law. The advent of more powerful and affordable computers allowed symbolic logic (the use of formulas to express logical problems) to be applied on a more practical scale. As the possibilities inherent in rapid data retrieval caused a burst of research during the mid-1960s, the ABA renamed the journal *Jurimetrics*.

Published by the ABA's Section of Law and Technology, *Jurimetrics* examines a wide range of interrelated scientific and legal topics. The journal's articles cover the influence on law of the so-called hard sciences as well as the social sciences, disciplines such as engineering and communications, methodologies such as symbolic logic and statistics, and the use of technology in law practice, legislation, and adjudication. Thus, article topics range from the state of the art in DNA EVIDENCE to experimental research on jury decision making. Also concerned with the regulation of science and technology, *Jurimetrics* examines cutting edge issues such as electronic security and copyright law in the age of the INTERNET.

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CROSS REFERENCE

Computer-Assisted Legal Research.

JURIS

[Latin, Of right; of law.] *A phrase that serves as the root for diverse terms and phrases dealing with the law; for example, jurisdiction, jurisprudence, or jurist.*

JURIS DOCTOR

The degree awarded to an individual upon the successful completion of law school.

Juris doctor, or doctor of jurisprudence, commonly abbreviated J.D., is the degree commonly conferred by law schools. It is required in all states except California (which includes an option called law office study) to gain ADMISSION TO THE BAR. Gaining admission to the bar means obtaining a license to practice law in a particular state or in federal court.

Until the 1930s and 1940s, many states did not require a person to have a law school degree in order to obtain a license to practice law. Most lawyers qualified for a license by working as an apprentice for an established attorney for a specified period. By the 1950s most states required a law school degree. State legislatures established this requirement to raise the standards of practicing attorneys and to restrict the number of attorneys. The degree offered by most colleges and universities was called a master of laws (L.L.M.) degree. In the 1960s, as colleges and universities increased the requirements for a law degree, the J.D. replaced the L.L.M. as the primary degree awarded by law schools.

The specific requirements for a J.D. vary from school to school. Generally, the requirements include completing a minimum number of class hours each academic period, and taking certain mandatory courses such as contracts, torts, CIVIL PROCEDURE, and CRIMINAL LAW in the first year of law school. All states require that students pass a course on PROFESSIONAL RESPONSIBILITY before receiving a J.D. degree.

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CROSS REFERENCE

Legal Education.

JURISDICTION

Jurisdiction is the geographic area over which authority extends; it is also legal authority and the authority to hear and determine causes of action.

Jurisdiction generally describes any authority over a certain area or certain persons. In the law, jurisdiction sometimes refers to a particular geographic area containing a defined legal authority. For example, the federal government is a jurisdiction unto itself. Its power spans the entire United States. Each state is also a jurisdiction unto itself, with the power to pass its own laws. Smaller geographic areas, such as counties and cities, are separate jurisdictions to the extent that they have powers that are independent of the federal and state governments.

Jurisdiction also may refer to the origin of a court's authority. A court may be designated either as a court of general jurisdiction or as a court of special jurisdiction. A *court of general jurisdiction* is a trial court that is empowered to hear all cases that are not specifically reserved for courts of special jurisdiction. A *court of special jurisdiction* is empowered to hear only certain kinds of cases.

Courts of general jurisdiction are often called district courts or superior courts. In New York State, however, the court of general jurisdiction is called the Supreme Court of New York. In most jurisdictions, other trial courts of special jurisdiction exist apart from the courts of general jurisdiction; some examples are probate, tax, traffic, juvenile, and, in some cities, DRUG COURTS. At the federal level, the district courts are courts of general jurisdiction. Federal courts of special jurisdiction include the U.S. TAX COURT and the BANKRUPTCY courts.

Jurisdiction can also be used to define the proper court in which to bring a particular case. In this context, a court has either original or appellate jurisdiction over a case. When the court has *ORIGINAL JURISDICTION*, it is empowered to conduct a trial in the case. When the court has *appellate jurisdiction*, it may only review the trial court proceedings for error.

Generally, courts of general and special jurisdiction have original jurisdiction over most cases, and appeals courts and the jurisdiction's highest court have appellate jurisdiction, but this is not always the case. For example, under Article III, Section 2, Clause 2, of the U.S. Constitution, the U.S. Supreme Court is a court of appellate jurisdiction. However, under the same clause, that Court has original jurisdiction in cases between states. Such cases usually concern disputes over boundaries and waterways.

Finally, jurisdiction refers to the inherent authority of a court to hear a case and to declare a judgment. When a PLAINTIFF seeks to initiate a suit, he or she must determine where to file the complaint. The plaintiff must file suit in a court that has jurisdiction over the case. If the court does not have jurisdiction, the DEFENDANT may challenge the suit on that ground, and the suit may be dismissed, or its result may be overturned in a subsequent action by one of the parties in the case.

A plaintiff may file suit in federal court; however, state courts generally have CONCURRENT JURISDICTION. Concurrent jurisdiction means that both the state and federal court have jurisdiction over the matter.

If a claim can be filed in either state or federal court, and the plaintiff files the claim in state court, the defendant may remove the case to federal court (28 U.S.C.A. §§ 1441 et seq.). This is a tactical decision. Federal court proceedings are widely considered to be less susceptible to bias because the jury pool is drawn from the entire state, not just from the local community.

State courts have concurrent jurisdiction in most cases. Federal courts have exclusive jurisdiction in a limited number of cases, such as federal criminal, antitrust, bankruptcy, patent, copyright, and some admiralty cases, as well as suits against the U.S. government.

Under federal and state laws and court rules, a court may exercise its inherent authority only if it has two types of jurisdiction: personal and subject matter. *PERSONAL JURISDICTION* is the authority that a court has over the parties in the case. *SUBJECT MATTER JURISDICTION* is a court's authority over the particular claim or controversy.

State Civil Court Jurisdiction

Personal Jurisdiction Personal jurisdiction is based on territorial concepts. That is, a court can gain personal jurisdiction over a party only if the party has a connection to the geographic area in which the court sits. Traditionally, this connection was satisfied only by the presence of the defendant in the state where the court sat. Since the late nineteenth century, notions of personal jurisdiction have expanded beyond territorial concepts, and courts may gain

personal jurisdiction over defendants on a number of grounds. However, the territorial basis remains a reliable route to establishing personal jurisdiction.

A person who has a civil claim may file suit in a court that is located in his or her home state. If the defendant lives in the same state, the court will have no trouble gaining personal jurisdiction. The plaintiff must simply serve the defendant with a summons and a copy of the complaint that was filed with the court. Once this is accomplished, the court has personal jurisdiction over both the plaintiff and the defendant. If the defendant lives outside the state, the plaintiff may serve the defendant with the process papers when the defendant appears in the state.

If the defendant lives outside the state and does not plan to re-enter the state, the court may gain personal jurisdiction in other ways. Most states have a *LONG-ARM STATUTE*. This type of statute allows a state court to gain personal jurisdiction over an out-of-state defendant who (1) transacts business within the state, (2) commits a tort within the state, (3) commits a tort outside the state that causes an injury within the state, or (4) owns, uses, or possesses real property within the state.

The emergence of the INTERNET as a way to communicate ideas and sell products has led to disputes over whether state long-arm statutes can be used to acquire personal jurisdiction over an out-of-state defendant. In *Zippo Manufacturing v. Zippo Dot Com* (952 F. Supp.1119 [W.D. Pa.1997]), a U.S. District Court proposed that a long-arm statute could be used only when the defendant has either actively marketed a product or the website has a degree of interactivity that suggests the website seeks to do business. Conversely, a passive website, where information is merely posted, would not subject a person to the reach of a long-arm statute.

In *Pavlovich v. Superior Court* (59 Cal.4th 262, 58 P.3d 2, 127 Cal. Rptr. 2d 329 [Cal. 2002]), the California Supreme Court ruled that an out-of-state website operator who had posted software that allowed users to decrypt and copy digital versatile discs (DVDs) containing motion pictures could not be sued in California state court. The operator, who lived in Texas, did not solicit business or have any commercial contact with anyone in California. The court relied on the *Zippo* sliding scale and concluded that Pavlovich fell into the passive category. The website "merely posts information and has no interactive features. There is no evidence in the record suggesting that the site targeted California. Indeed, there is no evidence that any California resident ever visited, much less downloaded" the software. Even if he had known that the software would encourage piracy, this substantive issue did not affect the threshold question of jurisdiction. Therefore, the lawsuit had to be dismissed for lack of personal jurisdiction.

By 2009 most courts used the interactive versus passive test when determining jurisdiction. However, some courts have employed an *effects* test to determine whether the action taken over the Internet targeted persons within the forum state. If there was an intentional action, which was expressly aimed at the forum state, with knowledge that the brunt of the injury would be felt in the forum state, then the court will find personal jurisdiction over the defendant.

The Minnesota Supreme Court took up the question of Internet jurisdiction in the context of a defamation lawsuit in *Griffis v. Luban* (646 N. W. 2d 527 [Minn. 2002]). Katherine Griffis, a resident of Alabama, filed a defamation lawsuit against Marianne Luban, a Minnesota resident, in Alabama state court. Griffis won a DEFAULT JUDGMENT of $25,000 for statements that Luban had made on the Internet. Luban elected not to appear in the Alabama proceeding, and Griffis then filed her judgment in the Minnesota county where Luban resided. Luban then filed a lawsuit challenging the judgment for want of personal jurisdiction. The Minnesota Supreme Court concluded that the key jurisdiction question was whether Luban had targeted the state of Alabama when she made her defamatory statements. The Court found that whereas Luban knew that Griffis lived in Alabama, she had not "expressly aimed" her statements at the state of Alabama. Instead, she had published these statements to a specialized Internet newsgroup, one that only had Griffis as a member from Alabama. The court stated: "The fact that messages posted to the newsgroup *could* have been read in Alabama, just as they *could* have been read anywhere in the world, cannot suffice to establish Alabama as the focal point of the defendant's conduct." Therefore, Griffis had not established personal jurisdiction over Luban in Alabama, and the Minnesota state courts were not obliged to enforce the Alabama judgment.

If an out-of-state defendant caused an injury while driving inside the state, the court may gain personal jurisdiction over the defendant on the theory that the defendant consented to such jurisdiction by driving on the state's roads. Many states have statutes that create such IMPLIED CONSENT to personal jurisdiction.

When the defendant is a corporation, it is always subject to personal jurisdiction in the courts of the state in which it is incorporated. If the corporation has sufficient contacts in other states, courts in those states may hold that the out-of-state corporation has consented to personal jurisdiction through its contacts with the state. For example, a corporation that solicits business in other states or maintains offices in other states may be subject to suit in those states, even if the corporation is not headquartered or incorporated in those states. A corporation's transaction of business in a foreign state is a sufficient contact to establish personal jurisdiction.

In actions concerning real property located within the state, state courts may use additional means to gain personal jurisdiction over out-of-state defendants. A state court may gain personal jurisdiction over all parties, regardless of their physical location, in a dispute over the title to real property. This type of personal jurisdiction is called *in rem*, or *against the thing*. Personal jurisdiction over all parties interested in the real property is gained not through the parties but through the presence of the land in the court's jurisdiction.

If a court cannot gain personal jurisdiction over an out-of-state defendant, the plaintiff may be forced to sue the defendant in the state in which the defendant resides or in the state where the injury occurred. For example, a plaintiff who was injured outside his or her home state may have to file suit in the defendant's home state or in the state where the injury occurred if the defendant has no plans to enter the plaintiff's home state.

Subject Matter Jurisdiction Courts of general jurisdiction have subject matter jurisdiction over the majority of civil claims, including actions involving torts, contracts, unpaid debt, and CIVIL RIGHTS violations. Courts of general jurisdiction do not have subject matter jurisdiction over claims or controversies that are reserved for courts of special jurisdiction. For example, in a state that has a probate court, all claims involving wills and estates must be brought in the probate court, not in a court of general jurisdiction.

In some cases, a claim must first be heard by a special administrative board before it can be heard by a court. For example, a workers' compensation claim in most states must be heard by a workers' compensation board before it can be heard in a court of general jurisdiction.

Another consideration in establishing subject matter jurisdiction is the AMOUNT IN CONTROVERSY. This is the total of all claims, counterclaims, and cross-claims in the suit. (A counterclaim is a claim by a defendant against a plaintiff; a CROSS-CLAIM is a claim by a plaintiff against another plaintiff or by a defendant against another defendant.) In most jurisdictions, if the amount in controversy does not exceed a certain limit, the case must be heard by a court other than a court of general jurisdiction. This court is usually called a SMALL CLAIMS COURT. The rules in such a court limit the procedures that are available to the parties so that the court can obtain a simple and speedy resolution to the dispute.

Federal Civil Court Jurisdiction

Personal Jurisdiction To obtain personal jurisdiction over the parties, a federal court follows the procedural rules of the state in which it sits. For example, a federal court in Michigan follows the Michigan state court rules governing personal jurisdiction. The court examines the usual factors in establishing personal jurisdiction, such as the physical location of the parties, the reach of the state's long-arm statute, any consent to personal jurisdiction by the defendant, and the location of real property in a dispute over real property.

Subject Matter Jurisdiction In some cases a plaintiff may file suit in federal court. These cases are limited to (1) claims arising from the U.S. Constitution or federal statutes (FEDERAL QUESTION jurisdiction), (2) claims brought by or against the federal government, and (3) claims in which all opposing parties live in different states and the amount in controversy exceeds $75,000 (diversity jurisdiction). A federal court obtains subject matter jurisdiction over a case if the case meets one or more of these three requirements.

Claims Arising from the U.S. Constitution or Federal Statutes Federal question jurisdiction

is covered in 28 U.S.C.A. § 1331. This statute provides that federal district courts have "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Some claims are expressly identified as federal in the Constitution. These claims include those involving ambassadors and consuls or public ministers, admiralty and maritime claims, and claims made by or against the federal government. Claims that are based on federal law also may be filed in federal court. An action against the federal government based on the NEGLIGENCE of a federal employee, for example, is authorized by the FEDERAL TORT CLAIMS ACT of 1946 (60 Stat. 842 [28 U.S.C.A. § 1346(b), 2674]).

The U.S. Supreme Court, in *Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc.* (535 U.S. 826, 122 S. Ct. 1889, 153 L. Ed. 2d 13 [2002]), issued a landmark decision on *arising under* jurisdiction of the federal courts. The case involved patent law litigation between two competitors, with the plaintiff filing a DECLARATORY JUDGMENT action in federal district court asking the court to declare that the plaintiff had not infringed the defendant's TRADE DRESS. This action was not based on a federal law but the defendant's counterclaim, in which it invoked federal patent law to allege patent infringement by the plaintiff, seemed to give the court arising under jurisdiction. The Court thought otherwise, ruling that the counterclaim did not confer federal jurisdiction and that the case must be dismissed. This decision limits the arising under jurisdiction of the federal courts and gives state courts the opportunity to hear copyright and patent actions (through a defendant's counterclaim) that have always been heard in the federal courts.

Some cases may combine federal and state issues. In such cases, no clear test exists to determine whether a party may file suit in or remove a suit to federal court. Generally, federal courts will decline jurisdiction if a claim is based predominantly on state law. For example, assume that a plaintiff is embroiled in a property dispute with a neighbor. The plaintiff files suit against the neighbor, alleging state-law claims of nuisance, TRESPASS, breach of contract, and ASSAULT. A state official advises the plaintiff that the property belongs to the neighbor (the defendant). If the plaintiff sues the state official in the same suit, alleging a constitutional violation such as the uncompensated taking of property, a federal court may refuse jurisdiction because the case involves predominantly state law.

Federal courts may decline jurisdiction on other grounds if a state court has concurrent jurisdiction. When they do so, they are said to abstain, because they are refraining from exercising their jurisdiction. Federal courts tend to abstain from cases that require the interpretation of state law, if state courts can decide those cases. Federal courts abstain in order to avoid answering unnecessary constitutional questions, to avoid conflict with state courts, and to avoid making errors in determining the meaning of state laws.

Claims Brought by or against the Federal Government Generally, the United States may sue in federal court if its claim is based on federal law. For example, if the federal government seeks to seize the property of a defendant in a drug case, it must base the action on the federal forfeiture statute, not on the forfeiture statute of the state in which the property lies.

Generally, state and federal governments have SOVEREIGN IMMUNITY, which means that they may not be sued. However, state and federal governments may consent to suit. At the federal level, Congress has removed the government's immunity for injuries resulting from the negligent and, in some cases, intentional conduct of federal agencies, federal officers, and other federal employees (60 Stat. 842 [28 U.S.C.A. § 1346(b), 2674, 2680]). Generally, the federal government is liable only for injuries resulting from the performance of official government duties.

If Congress has not waived federal immunity to certain suits, a person nevertheless may file suit against the agents, officers, or employees personally. For example, the U.S. Supreme Court has held that federal agents, officers, and employees who violate constitutional rights may be sued for damages in federal court (*Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 [1971]).

Claims in Which All Opposing Parties Live in Different States and the Amount in Controversy Exceeds $75,000 Diversity cases provide federal courts with subject matter jurisdiction under 28 U.S.C.A. § 1332. A civil case qualifies as a

federal diversity case if all opposing parties live in separate states and the amount in controversy exceeds $75,000. If the opposing parties live in the same state, the case may still qualify for federal subject matter jurisdiction if there is some remaining citizenship diversity between parties. For example, assume that a person is acting as a stakeholder by holding property for a third party. If ownership of the property is in dispute, the stakeholder may join the defendants in the suit to avoid liability to any of the parties. Such a case may be filed in federal court if a defendant lives in a different state, even if one of the defendants lives in the same state as the stakeholder or in the same state as the other defendants.

State and Federal Criminal Court Jurisdiction

Personal Jurisdiction Personal jurisdiction in a criminal case is established when the defendant is accused of committing a crime in the geographic area in which the court sits. If a crime results in federal charges, the federal court that sits in the state where the offense was committed has personal jurisdiction over the defendant. In a conspiracy case, the defendants may face prosecution in any jurisdiction in which a conspiratorial act took place. This can include a number of states if at least one conspirator crossed state lines or if the conspiracy involved criminal acts in more than one state. KIDNAPPING is another crime that can establish personal jurisdiction in courts in more than one state, if it involves crossing state lines.

Subject Matter Jurisdiction In criminal cases, the question of jurisdiction is relatively simple. Subject matter jurisdiction is easily decided because criminal courts or the courts of general jurisdiction have automatic subject matter jurisdiction over criminal cases. In most states, minor crimes may be tried in one court, and more serious crimes in another. In Idaho, for example, criminal cases are tried in the district courts. However, MISDEMEANOR cases may be assigned by the district court to a magistrate (Idaho Code § 1-2208 [1996]). (A magistrate is a judge who is authorized to hear minor civil cases and to decide criminal matters without a jury.)

The major question in criminal subject matter jurisdiction is whether the charges are pursuant to federal or state law. If the charges allege a violation of federal CRIMINAL LAW, the defendant will be tried in a federal court that is located in the state in which the offense was committed. If the charges allege a violation of state law, the defendant will face prosecution in a trial court that has jurisdiction over the area in which the offense was committed. If a crime violates both federal and state law, the defendant may be tried twice: once in state court, and once in federal court.

Venue

Venue is similar to, but separate from, jurisdiction. The venue of a case is the physical location of the courthouse in which the case is tried. If more than one court has both subject matter and personal jurisdiction over a case, the court that first receives the case can send the case, upon request of one of the parties, to a court in another jurisdiction. Unlike jurisdiction, venue does not involve a determination of a court's inherent authority to hear a case.

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CROSS REFERENCE

Diversity of Citizenship.

JURISDICTIONAL DISPUTE

Conflicting claims made by two different labor unions to an employer regarding assignment of the work or union representation.

Two basic types of controversies ordinarily arise in such disputes. There can be a disagreement concerning whether certain work should be done by workers in one union or another. For example, there might be a dispute between employees in a carpenters' union and a glaziers' union concerning who should install frames for windows in an apartment building. When this type of dispute arises, there must exist evidence of a threat of coercive action in order for the NATIONAL LABOR RELATIONS BOARD (NLRB) to intervene by conducting a hearing and making an assignment of the work.

A JURISDICTIONAL DISPUTE might also arise concerning which union should represent employees who are performing a particular type of work.

JURISPRUDENCE

From the Latin term juris prudentia, *which means "the study, knowledge, or science of law"; in the United States, more broadly associated with the philosophy of law.*

Legal philosophy has many branches, with four types being the most common. The most prevalent form of jurisprudence seeks to analyze, explain, classify, and criticize entire bodies of law, ranging from contract to tort to CONSTITUTIONAL LAW. Legal encyclopedias, law reviews, and law school textbooks frequently contain this type of jurisprudential scholarship.

The second type of jurisprudence compares and contrasts law with other fields of knowledge such as literature, economics, RELIGION, and the social sciences. The purpose of this type of study is to enlighten each field of knowledge by sharing insights that have proven to be important in advancing essential features of the compared discipline.

The third type of jurisprudence raises fundamental questions about the law itself. These questions seek to reveal the historical, moral, and cultural underpinnings of a particular legal concept. *The Common Law* (1881), written by OLIVER WENDELL HOLMES JR., is a well-known example of this type of jurisprudence. It traces the evolution of civil and criminal responsibility from undeveloped societies where liability for injuries was based on subjective notions of revenge, to modern societies where liability is based on objective notions of reasonableness.

The fourth and fastest-growing body of jurisprudence focuses on even more abstract questions, including, What is law? How does a trial or appellate court judge decide a case? Is a judge similar to a mathematician or a scientist applying autonomous and determinate rules and principles? Or is a judge more like a legislator who simply decides a case in favor of the most politically preferable outcome? Must a judge base a decision only on the written rules and regulations that have been enacted by the government? Or may a judge also be influenced by unwritten principles derived from theology, moral philosophy, and historical practice?

Four schools of jurisprudence have attempted to answer these questions: Formalism proposes that law is a science; realism holds that *law* is just another name for politics; positivism suggests that law must be confined to the written rules and regulations enacted or recognized by the government; and naturalism maintains that the law must reflect eternal principles of justice and morality that exist independent of governmental recognition.

Modern U.S. legal thought began in 1870. In that year, Holmes, the father of the U.S. legal realist movement, wrote his first major essay for the *American Law Review*, and CHRISTOPHER COLUMBUS LANGDELL, the father of U.S. legal formalism, joined the faculty at Harvard Law School.

Formalism

Legal formalism, also known as conceptualism, treats law like a math or science. Formalists believe that in the same way a mathematician or scientist identifies the relevant axioms, applies them to given data, and systematically reaches a demonstrable theorem, a judge identifies the relevant legal principles, applies them to the facts of a case, and logically deduces a rule that will govern the outcome of a dispute. Judges derive relevant legal principles from various sources of legal authority, including state and federal constitutions, statutes, regulations, and CASE LAW.

For example, most states have enacted legislation that prohibits courts from probating a will that was not signed by two witnesses. If a court is presented with a number of wills to probate for the same estate, and only one of those wills has been witnessed by at least two persons, the court can quickly deduce the correct legal conclusion in a formalistic fashion: Each will that has been signed by fewer than two witnesses will have no legal effect, and only the will executed in compliance with the statutory requirements may be probated.

Formalists also rely on inductive reasoning to settle legal disputes. Whereas deductive reasoning involves the application of general principles that will yield a specific rule when applied to the facts of a case, inductive reasoning starts with a number of specific rules and infers from them a broader legal principle that may be applied to comparable legal disputes in the future. *GRISWOLD V. CONNECTICUT*, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965), provides an example. In *Griswold*, the Supreme Court ruled that although no express provision of the federal Constitution guarantees the right to privacy, and although no precedent had established such a right, an individual's right to

privacy can be inferred from the First, Third, Fourth, Fifth, Ninth, and Fourteenth Amendments and the cases interpreting them.

English jurist SIR EDWARD COKE was among the first to popularize the formalistic approach to law in Anglo-American history. Coke believed that the common law was "the peculiar science of judges." The common law, Coke said, represented the "artificial perfection of reason" obtained through "long study, observation, and experience." Coke also believed that only lawyers, judges, and others trained in the law could fully comprehend and apply this highest method of reasoning. The rest of society, including the king or queen of England, was not sufficiently learned to do so.

Langdell invigorated Coke's jurisprudence of artificial reason in the United States during the second half of the nineteenth century. Langdell compared the study of law to the study of science, and suggested that law school classrooms were the laboratories of jurisprudence. Judicial reasoning, Langdell believed, parallels the reasoning used in geometric proofs. He urged professors of law to classify and arrange legal principles much as a taxonomist organizes plant and animal life. Langdell articulated what has remained the orthodox school of thought in U.S. jurisprudence throughout the twentieth century.

Since the early 1970s Professor RONALD M. DWORKIN has been the foremost advocate of the formalist approach with some subtle variations. Although Dworkin stops short of explicitly comparing law to science and math, he maintains that law is best explained as a rational and cohesive system of principles that judges must apply with integrity. The principle of integrity requires that judges provide equal treatment to all litigants presenting legal claims that cannot honestly be distinguished. Application of this principle, Dworkin contends, will produce a "right answer" in all cases, even cases presenting knotty and polemical political questions.

Realism

The realist movement, which began in the late eighteenth century and gained force during the administration of President FRANKLIN D. ROOSEVELT, was the first to attack formalism. Realists held a skeptical attitude toward Langdellian legal science. "The life of the law has not been logic, it has been experience," Holmes wrote in 1881.

Realists held two things to be true. First, they believed that law is not a scientific enterprise in which deductive reasoning can be applied to reach a determinate outcome in every case. Instead, most litigation presents hard questions that judges must resolve by balancing the interests of the parties and ultimately drawing an arbitrary line on one side of the dispute. This line is typically drawn in accordance with the political, economic, and psychological proclivities of the judge.

For example, when a court is asked to decide whether a harmful business activity is a common-law nuisance, the judge must ascertain whether the particular activity is reasonable. The judge does not base this determination on a precise algebraic equation. Instead, the judge balances the competing economic and social interests of the parties, and rules in favor of the litigant with the most persuasive case. Realists would thus contend that judges who are ideologically inclined to foster business growth will authorize the continuation of a harmful activity, whereas judges who are ideologically inclined to protect the environment will not.

Second, realists believed that because judges decide cases based on their political affiliation, the law tends always to lag behind social change. For example, the realists of the late nineteenth century saw a dramatic rise in the disparity between the wealth and working conditions of rich and poor U.S. citizens following the industrial revolution. To protect society's poorest and weakest members, many states began drafting legislation that established a MINIMUM WAGE and maximum working hours for various classes of exploited workers. This legislation was part of the U.S. Progressive movement, which reflected many of the realists' concerns.

The Supreme Court began striking down such laws as an unconstitutional interference with the freedom of contract guaranteed by the FOURTEENTH AMENDMENT of the U.S. Constitution. U.S. realists claimed that the Supreme Court justices were simply using the freedom-of-contract doctrine to hide the real basis of their decision, which was their personal adherence to free-market principles and laissez-faire economics. The realists argued that the free-market system was not really free at all. They believed that the economic structure of the United States was based on coercive laws such as the EMPLOYMENT-AT-WILL doctrine, which permits an

employer to discharge an employee for almost any reason. These laws, the realists asserted, promote the interests of the most powerful U.S. citizens, leaving the rest of society to fend for itself.

Some realists only sought to demonstrate that law is neither autonomous, apolitical, nor determinate. For example, JEROME FRANK, who coined the term *LEGAL REALISM* and later became a judge on the U.S. Court of Appeals for the Second Circuit, emphasized the psychological foundation of judicial decision making, arguing that a judge's decision may be influenced by mundane things like what he or she ate for breakfast. Frank believed that it is deceptive for the legal profession to perpetuate the myth that the law is clearly knowable or precisely predictable, when it is so plastic and mutable. KARL LLEWELLYN, another founder of the U.S. legal realism movement, similarly believed that the law is little more than putty in the hands of a judge who is able to shape the outcome of a case based on personal biases.

Since the mid-1960s this theme has been echoed by the CRITICAL LEGAL STUDIES movement, which has applied the skeptical insights of the realists to attack courts for rendering decisions based on racial, sexist, and homophobic prejudices. For example, feminist legal scholars have pilloried the Supreme Court's decision in *Craig v. Boren*, 429 U.S. 190, 97 S. Ct. 451, 50 L. Ed. 2d 397 (1976), for offering women less protection against governmental discrimination than is afforded members of other minority groups. Gay legal scholars similarly assailed the Supreme Court's decision in *Bowers v. Hardwick*, 478 U.S. 186, 106 S. Ct. 2841, 92 L. Ed. 2d 140 (1986), for failing to recognize a fundamental constitutional right to engage in homosexual SODOMY. The Supreme Court's 2003 decision in LAWRENCE V. TEXAS 539 U.S. , 123 S. Ct. 2472, 156 L. Ed. 2d 508, that overturned the *Bowers* holding was a vindication for gay rights jurisprudence.

Other realists, such as ROSCOE POUND, were more interested in using the insights of their movement to reform the law. Pound was one of the original advocates of sociological jurisprudence in the United States. According to Pound, the aim of every law—whether constitutional, statutory, or case—should be to enhance the welfare of society. JEREMY BENTHAM, a legal philosopher in England, planted the seeds of sociological jurisprudence in the eighteenth century when he argued that the law must seek to achieve the greatest good for the greatest number of people in society. Bentham's theory, known as utilitarianism, continues to influence legal thinkers in the United States.

Law and economics is one school of thought that traces its lineage to Benthamite jurisprudence. This school, also known as economic analysis of the law, argues that judges must decide cases in order to maximize the wealth of society. According to law and economics exponents, such as RICHARD POSNER, each person in society is a rational maximizer of his or her own self-interest. Persons who rationally maximize their self-interest are willing to exchange something they value less for something they value more. For example, every day in the United States, people voluntarily give up their time, money, and liberty to acquire food, property, or peace of mind. This school of thought contends that the law must facilitate these voluntary exchanges to maximize the aggregate wealth of society.

Another school of thought Bentham influenced is known as legal pragmatism. Unlike law and economics exponents, legal pragmatists provide no formula for determining the best means to improve the welfare of society. Instead, pragmatists contend that judges must merely set a goal that they hope to achieve in resolving a particular legal dispute, such as the preservation of societal stability, the protection of individual rights, or the delineation of governmental powers and responsibilities. Judges must then draft the best court order to accomplish this goal. Pragmatists maintain that judges must choose the appropriate societal goal by weighing the value of competing interests presented by a lawsuit, and then using a "grab bag" of "anecdote, introspection, imagination, common sense, empathy, metaphor, analogy, precedent, custom, memory, experience, intuition, and induction" to reach the appropriate balance (Posner 1990, 73).

Pragmatism, sometimes called instrumentalism, is best exemplified by Justice Holmes's statement that courts "decide cases first, and determine the principle afterwards." This school of thought is associated with result-oriented jurisprudence, which focuses more on the consequences of a judicial decision than on how the relevant legal principles should be applied.

The Realist-Formalist Debate

The realist-formalist dichotomy represents only half of the jurisprudential picture in the United States. The other half comprises a dialogue between the positivist and natural-law schools of thought. This dialogue revolves around the classic debate over the appropriate sources of law.

Positivists maintain that the only appropriate sources of law are rules and principles that have been expressly enacted or recognized by a governmental entity, like a state or federal legislature, administrative body, or court of law. These rules and principles may be properly considered law, positivists contend, because individuals may be held liable for disobeying them. Positivists believe that other sources for determining right and wrong, such as religion and contemporary morality, are only aspirational, and may not be legitimately consulted by judges when rendering a decision.

Natural-law proponents, or naturalists, agree that governmental rules and regulations are a legitimate source of law, but assert that they are not the only source. Naturalists believe that the law must be informed by eternal principles that existed before the formation of government and are independent of governmental recognition. Depending on the particular strain of natural law, these principles may be derived from theology, moral philosophy, human reason, historical practice, and individual conscience.

The dialogue between positivists and naturalists has a long history. For many centuries, historians, theologians, and philosophers distinguished positivism from naturalism by separating written law from UNWRITTEN LAW. For example, the Ten Commandments were inscribed on stone tablets, as were many of the laws of the ancient Greeks. Roman Emperor Justinian I (a.d. 482–565) reduced most of his country's laws to a voluminous written code. At the same time, Christian, Greek, and Roman thinkers all appealed to a higher law that transcended the written law promulgated by human beings.

Prior to the American Revolution, English philosophers continued this debate along the same lines. English political thinkers JOHN AUSTIN and THOMAS HOBBES were strict positivists who believed that the only authority courts should recognize are the commands of the sovereign because only the sovereign is entrusted with the power to back up a command with military and police force. First intimated by Italian philosopher Niccolò Machiavelli, the "sovereign command" theory of law has been equated in the United States with the idea that might makes right.

Contrasted with the writings of Hobbes and Austin were the writings of JOHN LOCKE in England and THOMAS JEFFERSON in America. In his *Second Treatise on Government* (1690), Locke established the idea that all people are born with the inalienable right to life, liberty, and property. Locke's ruminations about individual rights that humans possess in the state of nature prior to the creation of government foreshadowed Jefferson's DECLARATION OF INDEPENDENCE. In 1776, the Declaration of Independence announced the self-evident truth that "all men are created equal" and are "endowed by their Creator with certain inalienable Rights," including the right to "Life, Liberty and the pursuit of Happiness."

Both positivism and naturalism have had an enormous influence on how U.S. citizens think about law. The institution of African American SLAVERY, which was recognized by the U.S. Constitution and legalized by legislation passed in the South prior to the Civil War (1861–65), was attacked by abolitionists who relied on higher-law principles of religion and conscience to challenge the moral foundations of human bondage. Following WORLD WAR II, the Allied powers successfully prosecuted German government officials, industrialists, and military leaders in Nuremberg for committing GENOCIDE against European Jewry, even though the Nazi regime had passed laws authorizing such extermination. The Allies relied in part on the natural-law principle that human dignity is an inviolable right that no government may vitiate by written law.

Historical Jurisprudence

Positivists and naturalists tend to converge in the area of historical jurisprudence. Historical jurisprudence is marked by judges who consider history, tradition, and custom when deciding a legal dispute. Strictly speaking, history does not completely fall within the definition of either positivism or natural law. Historical events, such as the Civil War, are not legislative enactments, although they may be the product of governmental policy. Nor do historical events embody eternal principles of morality, although they may be the product of clashing moral views. Yet, historical events shape both morality

and law. Thus, many positivists and naturalists find a place for historical jurisprudence in their legal philosophy.

For example, Justice Holmes was considered a positivist to the extent that he believed that courts should defer to legislative judgment unless a particular statute clearly violates an express provision of the Constitution. But he qualified this stance when a given statute "infringe[s] on fundamental principles as they have been understood by the traditions of our people and our law" (LOCHNER V. NEW YORK, 198 U.S. 45, 25 S. Ct. 539, 49 L. Ed. 937 [1905]). In such instances, Holmes felt, courts were justified in striking down a particular written law.

BENJAMIN N. CARDOZO, considered an adherent of sociological jurisprudence by some and a realist by others, was another Supreme Court justice who incorporated history into his legal philosophy. When evaluating the merits of a claim brought under the Due Process Clauses of the Fifth and Fourteenth Amendments, Cardozo denied relief to claims that were not "implicit in the concept of ordered liberty" and the "principle[s] of justice [that are] so rooted in the traditions and conscience of our people as to be ranked as fundamental" (*Palko v. Connecticut*, 302 U.S. 319, 58 S. Ct. 149, 82 L. Ed. 288 [1937]).

Contemporary Thought

Each school of jurisprudence is not a self-contained body of thought. The lines separating positivism from realism and natural law from formalism often become blurry. The legal philosophy of Justice Holmes, for example, borrowed from the realist, positivist, pragmatic, and historical strains of thought.

In this regard, some scholars have observed that it is more appropriate to think of jurisprudence as a spectrum of legal thought, where the nuances of one thinker delicately blend with those of the next. For example, Harold Berman, a leading authority on comparative LEGAL HISTORY, has advocated the development of an integrative jurisprudence, which would assimilate into one philosophy the insights from each school of legal theory. The staying power of any body of legal thought, Berman has suggested, lies not in its name but in its ability to explain the enterprise of law.

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JURIST

A judge or legal scholar; an individual who is versed or skilled in law.

The term *jurist* is ordinarily applied to individuals who have gained respect and recognition by their writings on legal topics.

JURISTIC ACT

An action intended and capable of having a legal effect; any conduct by a private individual designed to originate, terminate, or alter a right.

A court performs a JURISTIC ACT when it makes a decision and hands down a judgment. An individual who enters into a contractual agreement is also performing a juristic act because of the legal ramifications of his or her agreement.

JURY

In trials, a group of people who are selected and sworn to inquire into matters of fact and to reach a verdict on the basis of the evidence presented to them.

A jury is addressed by an attorney in a court case. A jury is composed of a group of people selected to deliver the verdict in a trial.

CORBIS/JUPITER IMAGES/GETTY IMAGES

In U.S. law, decisions in many civil and criminal trials are made by a jury. Considerable power is vested in this traditional body of ordinary men and women, who are charged with deciding matters of fact and delivering a VERDICT of guilt or innocence based on the evidence in a case. Derived from its historical counterpart in English common law, trial by jury has had a central role in U.S. courtrooms since the colonial era, and it is firmly established as a basic guarantee in the U.S. Constitution. Modern juries are the result of a long series of U.S. Supreme Court decisions that have interpreted this constitutional liberty and, in significant ways, extended it.

History

The historical roots of the jury date to the eighth century a.d. Long before becoming an impartial body, during the reign of Charlemagne juries interrogated prisoners. In the twelfth century, the Normans brought the jury to England, where its accusatory function remained: Citizens acting as jurors were required to come forward as witnesses and to give evidence before the monarch's judges. Not until the fourteenth century did jurors cease to be witnesses and begin to assume their modern role as triers of fact. This role was well established in British common law when settlers brought the tradition to America, and after the United States declared its independence, all state constitutions guaranteed the right of jury trial in criminal cases.

Viewing the jury as central to the rights of the new nation, the Founders firmly established its role in the U.S. Constitution. They saw the jury as not only a benefit to the accused, but also as a check on the judiciary, much as Congress exists as a check on the Executive Branch. The Constitution establishes and safeguards the right to a trial by jury in four ways: Article III establishes this right in federal criminal cases; the FIFTH AMENDMENT provides for grand juries, or panels that review complaints in criminal cases, hear the evidence of the prosecutor, and decide whether to issue an indictment that will bring the accused person to trial; the SIXTH AMENDMENT guarantees in serious federal criminal cases the right to trial by a PETIT JURY, the most common form of jury; and the SEVENTH AMENDMENT provides for a jury trial in civil cases where the AMOUNT IN CONTROVERSY exceeds $20.

The modern jury is largely a result of decisions of the U.S. Supreme Court, which has shaped and sometimes extended these constitutional rights. One important decision was the Court's 1968 ruling in *Duncan v. Louisiana*, 391 U.S. 145, 88 S. Ct. 1444, 20 L. Ed. 2d 491, which requires states to provide for jury trials in serious criminal cases. Prior to *Duncan*, states had their own rules; Louisiana, for instance, required juries only in cases where the possible punishment was death or hard labor. The Court declared that the right to a jury trial is fundamental. In cases in which the punishment exceeds six months' imprisonment, it ruled, the Due Process Clause of the FOURTEENTH AMENDMENT requires that the protections of the Sixth Amendment apply equally to federal and state criminal prosecutions.

Defendants may, under some circumstances, refuse a jury trial in favor of a trial before a judge. In 1965, the U.S. Supreme Court ruled that the constitutional right to a jury trial does not imply a related right to refuse one (*Singer v. United States*, 380 U.S. 24, 85 S. Ct. 783, 13 L. Ed. 2d 630). It observed that juries are important not only to the DEFENDANT but also to the government and the public. The government, it wrote, has an interest in trying cases "before the tribunal which the Constitution regards as most likely to produce a fair result." Thus, in federal cases, rules governing CRIMINAL PROCEDURE allow a defendant to waive a jury trial only if the government consents and the court gives its approval. States vary in their approach, with some, such as Nebraska and Minnesota, requiring only the court's approval and others, such as

Minnesota's Approach to a More Diverse Jury Pool

Many urban areas have encountered difficulties in providing racially and economically diverse jury pools. Critics of the criminal justice system point out that people of color are overrepresented in the number of individuals arrested, prosecuted, and imprisoned, and underrepresented on criminal juries.

In 1993 the Minnesota Supreme Court Task Force on Racial Bias in the Judicial System issued a report that called for changes in jury management, so as to encourage diversity in juries. The judicial system took several steps to respond to the report.

The Minnesota Supreme Court amended jury management rules to authorize Hennepin and Ramsey Counties, the most populous and racially diverse counties in the state, to adopt new jury selection procedures that guarantee that, by percentage, minority group representation on the grand jury is equal to that in the two counties. Hennepin County implemented a plan that allows grand jurors to be selected randomly unless there are no people of color among the first 21 jurors selected, in which case the selection process continues until at least two of the 23 grand jurors are people of color.

At the state level, the judicial system secured funds from the legislature to raise the rate of daily juror pay and to pay for drop-in day care for jurors who normally do not use day care. The system also began to reimburse jurors for their mileage to and from the courthouse. These steps were taken to decrease the economic hardship on potential jurors who might otherwise ignore a jury summons or ask to be excused.

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Illinois and Louisiana, granting the defendant's wish as long as the decision is informed.

In 2002 a Jury Innovations Committee established in Florida offered no fewer than 48 jury-reform suggestions designed to make the system more efficient and user-friendly. The suggestions included requiring jury instructions to be made clearer and to allow jurors to discuss evidence as it is presented, instead of after deliberations begin.

Jury Selection

Jury selection is the process of choosing jurors. Not all people are required to serve on the jury: Some individuals and members of some occupational groups may be excused if serving would cause them or their family hardship. The U.S. Supreme Court has held that the Sixth Amendment merely requires that jurors be selected from a list that does not exclude any identifiable segment of the community (*Taylor v. Louisiana*, 419 U.S. 522, 95 S. Ct. 692, 42 L. Ed. 2d 690 [1975]).

Federal courts select grand and petit juries according to the guidelines in the Jury Selection and Service Act of 1968 (28 U.S.C.A. §§ 1861–78 [2000]). Generally, most communities use voter-registration lists to choose prospective jurors, who are then summoned to appear for jury duty. This group of prospective jurors is called a venire.

Once the venire is assembled, attorneys for both the prosecution and the DEFENSE begin a process called voir dire. Literally meaning "to speak the truth," voir dire is a preliminary examination of the prospective jurors, in order to inquire into their competence and suitability to sit on the jury. Although the judge may ask questions, it is primarily the attorneys who do so. Their goal is to eliminate jurors who may be biased against their side, while choosing the jurors who are most likely to be sympathetic. Attorneys for each side are allowed to reject potential jurors in two ways. They may dismiss anyone for cause, meaning a reason that is relevant to that person's ability and fitness to perform jury duty. And they may issue a limited number of peremptory challenges, which are dismissals that do not require a reason.

The process of voir dire—especially in the exercise of peremptory challenges to custom

Should the Peremptory Challenge Be Abolished?

A PEREMPTORY CHALLENGE permits a party to remove a prospective juror without giving a reason for the removal. This type of challenge has had a long history in U.S. law and has been viewed as a way to ensure an impartial jury. However, use of the peremptory challenge changed as a result of the U.S. Supreme Court decision in *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986), and its progeny, and the changes have led some lawyers and legal commentators to call for its abolition. They argue that these Court decisions have deprived lawyers of their absolute discretion in using the challenges and have turned peremptory challenges into challenges for cause. Defenders of the peremptory challenge believe that the new race, gender, and religious affiliation requirements initiated by *Batson* simply ensure that jurors will not be excluded on the basis of stereotypes.

Those who favor retention of the peremptory challenge point to its four purposes: The peremptory challenge allows litigants to secure a fair and impartial jury. It gives the parties some control over the jury selection process. It allows an attorney to search for biases during the selection process without fear of alienating a potential juror. If, for example, a juror appears offended by the nature of the questioning, that juror can be excluded even if the answers she gives do not demonstrate bias. Finally, the peremptory challenge serves as an insurance policy when a challenge for cause is denied by the judge and the challenging party still believes that the juror is biased.

Defenders of the peremptory challenge contend that the limitations imposed by the Supreme Court have not substantially impaired the use of the challenge. As a result of *Batson*, a peremptory challenge can be questioned by the opposite side if that side believes that it was based solely on race or gender. The reasoning behind this change is that striking jurors on the basis of race or gender perpetuates stereotypes that were prejudicial and that were based on historical discrimination. The only way to correct this record is to allow a party to establish a PRIMA FACIE case of racial or gender discrimination. Defenders believe that to say *Batson* introduced race into the jury selection process is to ignore the part race has already played in the use of peremptory challenges. The other side has the opportunity to offer a nondiscriminatory reason for the challenge. The reason does not have to rise to the level of a "for-cause" challenge. It merely has to be a reasonable concern that can be articulated. Defenders of the challenge argue that this is an acceptable modification of the challenge.

They also point out that other characteristics of jurors are not bound by the *Batson* line of cases. A peremptory challenge based on a juror's RELIGION, age, income, occupation, or political affiliation

design a jury—has provoked controversy. Defendants may challenge a venire, alleging discrimination, but such complaints are difficult to prove. Thus, critics of the selection process have argued that it skews the composition of juries according to race, class, and gender. In 1990, the U.S. Supreme Court held that juries need not represent a cross section of a community, but merely must be drawn from a pool that is representative of the community (*Holland v. Illinois*, 493 U.S. 474, 110 S. Ct. 803, 107 L. Ed. 2d 905). In 1991, it forbade prosecutors to use their peremptory challenges to exclude potential jurors on the basis of race (*Powers v. Ohio*, 499 U.S. 400, 111 S. Ct. 1364, 113 L. Ed. 2d 411). In 1999, the Supreme Court of Connecticut ruled that prospective jurors could not be dismissed solely on account of their religious beliefs, except when those beliefs would keep them from performing their duties on the jury (*State v. Hodge*, 726 A.2d 531 [Conn. 1999]).

Along with other complaints—on issues ranging from efficiency to fairness—the decisions provided advocates of jury reform with further ammunition for their efforts to change fundamentally, and even to eliminate, juries.

Jury Size

Juries range in size according to their nature. Grand juries are so named because they are usually larger than petit juries, having from 12 to 23 members. Traditionally, petit juries have had 23 members, but the number is not fixed. In 1970 the U.S. Supreme Court held that the number 12 was not an essential element of trial by jury (*Williams v. Florida*, 399 U.S. 78, 90 S. Ct. 1893, 26 L. Ed. 2d 446), and it has sanctioned juries of no fewer than six members in criminal cases (*Ballew v. Georgia*, 435 U.S. 223, 98 S. Ct. 1029, 55 L. Ed. 2d 234 [1978]). Parties in federal district courts, as well as in many state courts, can stipulate that the jury size be any number

cannot be questioned as long as it is not a pretext for concealing race or gender bias. Therefore, argue supporters, the peremptory challenge is still a valuable tool in trial proceedings.

Those who argue for the abolition of the peremptory challenge come from two camps. One camp believes that the *Batson* line of cases was a mistake. This group would prefer to return to unrestricted use of the challenge but, knowing that overturning precedent is unlikely, recommends eliminating the challenge. The other camp believes that the racial, gender, and religious affiliation tests crafted by the courts are idealistic creations that are easily subverted in daily courtroom practice. The reality is that allegations of bias using *Batson* rarely are successful.

The group that believes that the changes following *Batson* were a mistake argues that the whole point of the peremptory challenge is that it is made totally within the discretion of the lawyer. A trial lawyer may have a gut feeling about a juror, a feeling that is difficult to articulate to a judge and does not rise to a for-cause strike. Prior to *Batson* a court would allow this type of peremptory challenge. Since *Batson* the lawyer is required to articulate a reason. The temptation for the lawyer is to invent a "reasonable" explanation rather than risk having the peremptory challenge denied.

These critics argue that the only way for a lawyer to protect a client under this new system is to interrogate prospective jurors concerning intimate, personal matters in order to create defensible grounds for striking them. Lawyers must take more notes during questioning and spend more time evaluating the answers of jurors. The selection of a jury is lengthened if this tactic is chosen, placing more pressure on an overtaxed court system. Therefore, contend these critics, it would be better to abolish peremptory challenges and try other methods of jury selection. One alternative is expanding challenges for cause, allowing lawyers to exclude prospective jurors for legitimate, articulated reasons that do not satisfy the tougher current standards of challenges for cause.

The other group that questions *Batson* points to the difficulty of achieving the racially neutral selection of a jury. Surveys have shown that motions to deny peremptory challenges because of race or gender bias are rarely made, and that when they are judges accept all types of questionable race-neutral explanations to refute them. Thinking in the legal community over this issue has led state judiciaries to reflect on the best course to take. For example, the Florida Supreme Court-appointed Jury Innovations Committee issued a report in 2002 that recommended the elimination of peremptory challenges.

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between six and 12. Commonly, federal district court juries consist of six persons for civil cases.

Jury Instructions

Throughout a trial, the jury receives instructions from the judge. The judge explains the relevant points of law, which the jury is bound to accept and to apply. The judge directs the jury to disregard inadmissible testimony and provides guidelines on the way to behave outside of court. During the 1995 trial of O. J. SIMPSON for the MURDER of his estranged second wife and a friend of hers, for example, Judge Lance Ito issued daily orders to jurors not to discuss the case with anyone. Some instructions vary across jurisdictions and according to judges, such as whether jurors will be allowed to take notes during the trial; generally, they may not. In certain highly publicized trials, the judge may sequester the jury—that is, isolate its members in private living quarters such as hotel rooms in order to shield them from trial publicity. Violating the judge's orders can result in a juror being dismissed from the trial in favor of an alternate juror.

Jury Verdict

Following the closing arguments in a trial, jurors deliberate in private to arrive at a verdict, which is then reported to the court by the jury foreman or forewoman. Defendants in federal jury trials have the right to a unanimous verdict. This is not true in state jury trials, where the size of the jury determines whether unanimity is required: A 12-member jury may convict without unanimity, whereas a six-member jury may not.

In some cases, consensus among jurors is very difficult to reach. When jurors fail to reach an agreement, the judge may issue an instruction known as an Allen charge, in which the judge tells

the jurors to continue deliberating and to listen carefully to each other and to be deferential toward each other's views. Continued failure to arrive at a verdict results in a HUNG JURY, which necessitates a new trial with a different jury.

In criminal trials in most jurisdictions, the jury's job ends with the delivery of a verdict of guilt or innocence on every count pertaining to the case, and the judge determines sentencing. In civil cases, juries generally determine the amount of a damages award.

Jurors sometimes exercise their right to protest against a law that they consider unfair or unjust by voting "not guilty" even though the defendant is guilty of violating that law. This practice is called *JURY NULLIFICATION* and it goes back to colonial times. An example of jury nullification would be when a juror who believes that marijuana should be legalized votes "not guilty" in a case in which the defendant is accused of growing marijuana. The Fully Informed Jury Association (FIJA), founded in 1989, provides information about jury nullification to prospective jurors who might not know that it exists as an option.

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Due Process of Law; Grand Jury.

JURY COMMISSION

A group of officials charged with the responsibility of choosing the names of prospective jury members or of selecting the list of jurors for a particular term in court.

The provisions governing these officers vary greatly from one state to another. In certain states, they are elected, and in others, they are appointed by the governor or by judges. Commissioners may be regarded as officers of the state or county or of the court which they serve. In choosing the names to compose the jury list, the commissioners have the power to decide those who are fit to serve as jurors or whether particular individuals possess the qualifications set forth by the statutes. The list, however, must be selected without discrimination from all those qualified to serve as jurors.

JURY NULLIFICATION

A sanctioned doctrine of trial proceedings wherein members of a jury disregard either the evidence presented or the instructions of the judge in order to reach a verdict based upon their own consciences. It espouses the concept that jurors should be the judges of both law and fact.

The traditional approach in U.S. court systems is for jurors to be the "triers of fact," while the judge is considered the interpreter of law and the one who will instruct the jury on the applicable law. JURY NULLIFICATION occurs when a jury substitutes its own interpretation of the law and/or disregards the law entirely in reaching a VERDICT. The most widely accepted understanding of jury nullification by the courts is one that acknowledges the *power* but not the *right* of a juror or jury to nullify the law. Jury nullification is most often, although rarely, exercised in criminal trials but technically is applicable to civil trials as well, where it is subject to civil procedural remedies such as the JUDGMENT NOTWITHSTANDING THE VERDICT.

In criminal cases, however, the FIFTH AMENDMENT to the U.S. Constitution makes final a jury trial that results in an acquittal, and it guarantees freedom from DOUBLE JEOPARDY. This gives juries an inherent power to follow their own consciences in reaching a verdict, notwithstanding jury instructions or charges to the contrary.

History and Development

Jury nullification is not new; in fact, proponents wanting to justify its contemporary application do so by referring to early U.S. history when American colonists struggled to fashion a legal system that would be applicable to them. Prior to U.S. independence, the ENGLISH LAW of SEDITIOUS LIBEL carried grave consequences for colonists who spoke out against British rule of the colonies. In 1735, defense counsel for John Peter Zenger, at Zenger's trial for seditious libel, contended that:

> [Juries] have the right beyond all dispute to determine both the law and the facts, and where they do not doubt of the law, they ought to do so. This of leaving it to the judgment of the Court whether the words are libelous or not in effect renders juries useless (to say no worse) in many cases.

The jury acquitted Zenger, and every subsequent colonial jurisdiction that confronted the issue of the jury's right to decide both the law and the facts also came to the conclusion that jurors could decide matters of law. However, this conclusion must be put into historical perspective. First, in pre-revolutionary days, colonists lived under what they deemed an undemocratic, tyrannical government. The jury became a shield, where colonists could be judged by members of their own communities, and it was considered their only means for democratic expression. Second, the entire premise of democracy, in both pre- and post-independence days, demanded popular control of all facets of government. There was also a practical side to granting juries such unyielding control of trials: early colonial judges were essentially laymen selected from among their peers, and they often knew no more law than did the jurors.

However, once the United States established itself and a new republican form of government was developed, the will of the people became expressed through popular election of representatives and the enactment of their own laws. As nullification of the law would constitute a frustration of the popular will, the issue became essentially moot. Jury nullification was no longer considered necessary or desirable in a democratic society. Concomitantly, the role of judges as those who decided issues of law became enmeshed with traditional trial procedure. Not until more than 100 years later did the U.S. Supreme Court have to address the issue. In the case of *Sparf and Hansen v. United States*, 156 U.S. 51, 15 S. Ct. 273, 39 L. Ed. 343 (1895), it unequivocally determined that, in the federal system at least, there was no right to jury nullification. The opinion noted,

> [Juries] have the physical power to disregard the law, as laid down to them by the court. But I deny that...they have the moral right to decide the law according to their own notions or pleasure. On the contrary, I hold it the most sacred constitutional right of every party accused of a crime that the jury should respond as to the facts, and the court as to the law...This is the right of every citizen, and it is his only protection.

In subsequent years, jurors tended to invoke nullification to address either unpopular laws or overzealous application of them. Historic examples include the Alien and Seditions Acts, the Fugitive Slave Acts, and PROHIBITION. During the era of the VIETNAM WAR, the issue resurfaced in *United States v. Dougherty*, 473 F.2d 113 (D.C. Cir. 1972). In that case, DEFENDANT members of the Catholic clergy had ransacked the offices of the Dow Chemical Company to protest the manufacturing of napalm. At trial, defense counsel requested that members of the jury be instructed on their power to nullify the law. The trial court refused, and the court of appeals upheld the decision. Sporadic subsequent cases, presenting variations on the theme, have similarly underscored the high court's historic ruling.

Notwithstanding a judiciary that denied jurors the *right* to nullify, over the years, jurors have continued to use their *power* to do so. The power is most often wielded when jurors believe that an acquittal is justified for reasons that the law does not officially recognize. Examples include controversial social issues such as motorcycle helmet laws, ABORTION and right-to-life issues, medicinal use of marijuana, and EUTHANASIA.

In 1997 the U.S. Court of Appeals for the Second Circuit held that a juror's intent to nullify the law was JUST CAUSE for dismissal from the jury.

The case of *United States v. Thomas*, 116 F.3d 606 (2d Cir. 1997) involved an African-American juror's dismissal from the criminal jury trial of five African Americans on drug charges. However, the narrow opinion also reversed the convictions of the five defendants and remanded the matter for a new trial. Although the court ruled that a juror's refusal to apply the relevant law was just cause for dismissal, only unambiguous evidence of the juror's deliberate disregard of the law (not apparent in this case) would justify such a dismissal. In so holding, the appellate court

acknowledged the necessity for secrecy in jury deliberations.

Similarly in 1999, the Colorado Court of Appeals reversed a lower court's contempt conviction of juror Laura Kriho. *People v. Kriho*, 996 P.2d. 158 (Colo. App. [1999]). Several of Kriho's fellow jurors testified that during deliberations, she suggested to them that drug cases should be handled in the community rather than by a criminal justice system, and then advised them of their right to nullify. Although the trial court cited Kriho's alleged misleading of the court about her attitudes toward drug use during *voir dire* examination, the appellate court found that the Kriho case was, in fact, about jury nullification. It reversed her conviction on grounds that the court should not have considered evidence from jury-room deliberations. The end result of these cases reaffirms that juries have the power to render unreviewable general verdicts of acquittal, making it nearly impossible to definitely prove that nullification occurred.

Legislative Efforts

Starting in the early 1990s, a new wave of grassroots promoters again brought the issue to the forefront, attempting this time to focus on legislation rather than on CASE LAW. Several states—including Arizona, Louisiana, Massachusetts, Tennessee, and Washington—were unsuccessful in efforts either to introduce or to pass legislation or constitutional amendments that would require judges to instruct jurors of their right to nullify the law. And in 2002, South Dakota voters overwhelmingly rejected a proposed CONSTITUTIONAL AMENDMENT to institutionalize jury nullification.

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Jury.

JUS

[Latin, right; justice; law; the whole body of law; also a right.] *The term is used in two meanings: Jus means law, considered in the abstract; that is, as distinguished from any specific enactment, which we call, in a general sense, the law. Or it means the law taken as a system, an aggregate, a whole. Or it may designate some one particular system or body of particular laws; as in the phrases* jus civile, jus gentium, jus proetorium.

In a second sense, jus *signifies a* right; *that is, a power, privilege, faculty, or demand inherent in one person and incident upon another; or a capacity residing in one person of controlling, with the assent and assistance of the state, the actions of another. This is its meaning in the expressions* jus in rem, jus accrescendi, jus possessionis.

JUS COGENS

That body of peremptory principles or norms from which no derogation is permitted; those norms recognized by the international community as a whole as being fundamental to the maintenance of an international legal order.

Elementary rules that concern the safeguarding of peace and notably those that prohibit recourse to force or the threat of force. Norms of a humanitarian nature are included, such as prohibitions against genocide, slavery, and racial discrimination.

Jus cogens may, therefore, operate to invalidate a treaty or agreement between states to the extent of the inconsistency with any such principles or norms.

JUS TERTII

The right of a third party. A tenant or bailee or another in possession of property, who pleads that the title is in some person other than that person's landlord or bailor, is said to set up a jus tertii.

JUST

Legally right; conformity with that which is lawful or fair.

Just cause for an action, for example, is a reason for a course of action that is based upon GOOD FAITH.

JUST CAUSE

A reasonable and lawful ground for action.

Appearing in statutes, contracts, and court decisions, the term *JUST CAUSE* refers to a standard of reasonableness used to evaluate a person's actions in a given set of circumstances. If a person acts with just cause, her or his actions are based on reasonable grounds and committed in GOOD FAITH. Whether just cause exists must be determined by the courts through an evaluation of the facts in each case. For example, in *Dubois v. Gentry*, 182 Tenn. 103, 184 S.W. 2d 369 (1945), the Supreme Court of Tennessee faced the question of whether a PLAINTIFF who leased a filling station had acted with just cause in terminating a lease contract. The DEFENDANT station owner argued that the plaintiff had no right under the terms of the lease to terminate it. The court found that the plaintiff had just cause to terminate the lease because the effort supporting WORLD WAR II had created an employee shortage and wartime rationing had placed restrictions on gasoline and automobile parts, making it unprofitable to operate the station.

The term *just cause* frequently appears in EMPLOYMENT LAW. Employment disputes often involve the issue of whether an employee's actions constituted just cause for discipline or termination. If the employer was required to have just cause for its action and punished the worker without just cause, a court may order the employer to compensate the worker. Labor unions typically negotiate for a contract provision stating that an employee cannot be fired absent just cause.

Since the 1980s a just cause standard has developed for employees not protected by an employment or a union contract. This standard is an alternative to the traditional employment-at-will doctrine. Under the latter, which has been in place since the late 1800s, employees who do not have an employment contract may be terminated at the will of the employer for any reason, or for no reason. Under the new just cause standard, many jurisdictions now hold an employer to its word where the employer has stated it will not fire employees without just cause.

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JUST COMPENSATION

Equitable remuneration to the owner of private property that is expropriated for public use through condemnation, the implementation of the governmental power of eminent domain.

The FIFTH AMENDMENT to the U.S. Constitution proscribes the taking of private property by the government for public use without JUST COMPENSATION. No precise formula exists by which the elements of just compensation can be calculated. Ordinarily, the amount should be based upon the loss to the owner, as opposed to the gain by the taker. The owner should be fairly and fully indemnified for the damage that he or she has sustained. The owner has a right to recover the monetary equivalent of the property taken and is entitled to be put in as good a financial position as he or she would have been in if the property had not been taken. Generally, the measure of damages for property condemned through EMINENT DOMAIN is its fair market value, since the sentimental value to the owner is not an element for consideration. Market value, however, is not an absolute method of valuation but rather a practical standard to aid the courts in their determination of just compensation based upon constitutional requirements.

When just compensation is assessed, all elements that can appropriately enter into the question of value are regarded. For example, the original cost of the property taken, added to the cost of reproduction or replacement, minus depreciation, can be considered when the market value of property is determined.

JUST DESSERTS

A retributive theory of criminal punishment that proposes reduced judicial discretion in sentencing and specific sentences for criminal acts without regard to the individual defendant.

JUST WAR

As widely used, a term referring to any war between states that meets generally accepted international criteria of justification. The concept of just war relies on political, moral, and theological tenants, as it promotes a peaceful resolution and coexistence between states, and the use of force or the invocation of armed conflict only under certain circumstances. It is not the same as, but is often

confused with, the term jihad *or "holy war," a Muslim religious justification for war.*

The principle of a JUST WAR emerged early in the development of scholarly writings on INTERNATIONAL LAW. Under this view, a just war was a means of national self-help whereby a state attempted to enforce rights actually or allegedly based on international law. State practice from the eighteenth to the early part of the twentieth century generally rejected this distinction, however, as war became a frequently chosen means of altering the existing rights and boundaries of states, irrespective of the actual merits of the controversy.

Following WORLD WAR I, diplomatic negotiations resulted in the General Treaty for the RENUNCIATION OF WAR, more commonly known as the KELLOGG-BRIAND PACT, signed in 1928. The signatory nations renounced war as a means to resolve international disputes, promising instead to use peaceful methods.

The aims of the Kellogg-Briand Pact were adopted in the Charter of the UNITED NATIONS in 1945. Under the charter, the use or threat of force as an instrument of national policy was condemned, but nations were permitted to use force in individual or collective SELF-DEFENSE against an aggressor. The General Assembly of the United Nations has further defined aggression as armed force by a state against the sovereignty, territorial integrity, or political independence of another state, regardless of the reasons for the use of force. The Security Council is empowered to review the use of force and, therefore, to determine whether the relevant circumstances justify branding one nation as the aggressor and in violation of charter obligations. Under the modern view, a just war is one waged consistent with the Kellogg-Briand Pact and the Charter of the United Nations.

What has complicated the concept of just war in contemporary international relations is the emergence of "asymmetrical warfare." The term refers to conflict with parties or entities (such as international terrorist groups) who are neither officially connected with, nor owe allegiance to, any particular public authority or state. While these individuals or groups may be dependent upon clandestine assistance from states willing to help them secretly, they are not publicly responsible to them. Because contemplation of just war requires public authorities to act in their official capacities for the common good, that objective is frustrated by the lack of a discernible, clearly identifiable enemy state against which to act. As a result, the international community is divided over what constitutes legitimate grounds for a traditional state actor to attack an international terrorist group inside the sovereign territory of another country.

The September 11, 2001, terrorist attacks resulted in the deaths of almost 3,000 people in New York City, Washington, D.C., and rural Pennsylvania, near Shanksville. According to U.S. intelligence, the attacks were carried out by a group of 19 Islamist terrorists with links to the al-Qaeda network. The United States responded to the attacks by declaring a WAR ON TERRORISM. During the first phase of this war, the United States invaded Afghanistan to depose the Taliban government, which was believed to have been harboring the terrorists while they planned the SEPTEMBER 11 ATTACKS and providing sanctuary to the terrorists after the attacks. Known as Operation Enduring Freedom, the American-led invasion of Afghanistan removed the Taliban from power. However, the Taliban has regrouped, regained strength, and reclaimed some territory, while U.S. forces remain in Afghanistan under NATO leadership as of 2009.

The second phase of the War on TERRORISM began on March 20, 2003, when the United States invaded Iraq. U.S. intelligence indicated that Iraqi President Saddam Hussein had a history of supporting international terrorist organizations and that he had stockpiled WEAPONS OF MASS DESTRUCTION (WMD) in large quantities. The intelligence also indicated that Hussein had used WMD (mostly biological and chemical agents) against Iran during the Iran-Iraq war and against Iraqi Kurds in Northern Iraq. According to U.S. President GEORGE W. BUSH, the purpose of the Iraq invasion was to disarm Iraq of WMD and thus prevent terrorist groups like al-Qaeda from acquiring them. Within three weeks after the invasion, the Iraqi military had collapsed, and Hussein had been removed from power. However, an insurgency and sectarian violence soon flared up and made the continued presence of U.S. military forces necessary. As of 2009 the U.S. military continued to maintain a presence in Iraq, with more than 4,000 U.S. service men and women having died in Iraq during the six-year conflict.

Dating back to the early Catholic theologians who first wrote about just-war theory, there was

only one kind of just war: a war in self-defense to resist aggression by another nation. Principles established in the NUREMBERG TRIALS of the Nazi war criminals following WORLD WAR II, and later adopted by the United Nations, declared that it is a "crime against peace" to start or wage "a war against the territorial integrity, political independence, or sovereignty of a state." The United Nations charter also outlaws wars of aggression and specifically sanctions wars waged in self-defense. Under this line of thought, then, both of the U.S.-initiated wars in Afghanistan and Iraq might be described as unjust wars because technically speaking neither the Taliban government in Afghanistan nor the Saddam Hussein government in Iraq had attacked the United States prior to the commencement of hostilities.

Yet for many people around the world, the war in Afghanistan has always been considered the "good war," while the war in Iraq has long been considered the "bad war." The war in Afghanistan was considered the "good war" for several reasons. First, the available evidence indicated that the Taliban government was in fact harboring al-Qaeda terrorists, who were believed to have carried out the attacks of September 11. Second, more than 40 nations expressly provided military, logistical, or other support for the war in Afghanistan, lending strength in numbers to the moral underpinnings of the war. Third, the war resulted in the replacement of a harsh despotic regime governing Afghanistan with a regime that was democratically elected. The war, then, was not fought for territorial aggrandizement on the part of the invading coalition. Fourth, execution of the war was not marred by widespread and notorious misconduct of the invading coalition forces. Finally, evidence gathered following the invasion supported the original premise for the invasion, namely that the Taliban had developed cozy relations with al-Qaeda and had been allowing the terrorist network to use Afghanistan as a safe haven from which to launch their attacks.

Evaluating the U.S.-led war in Iraq under just-war principles is much more complicated. There are two perspectives. One perspective holds that the Iraq invasion must be evaluated based on the information available on the date of the invasion. The other perspective holds that the Iraq invasion must be evaluated in light of not only the information available before military operations began, but in light of all the information that has become available since then.

On the date of the invasion, U.S. intelligence knew that following the 1991 Gulf War, the U.N. Security Council had passed Resolution 687, which required Iraq to destroy all of its chemical, nuclear, and biological WEAPONS. Over the next ten years, the U.N. compiled a series of reports showing that Saddam Hussein had failed to comply with that resolution. On November 8, 2002, the U.N. Security Council, in a 15-0 vote, passed Resolution 1441, which found Iraq to be in "material breach" of Resolution 687, and warned of "serious consequences" if Iraq did not fulfill its obligations to disclose and dismantle its WMD.

In January of 2003, U.N weapons inspector Hans Blix reported that Saddam Hussein and the Iraqi government still had not come to a "genuine acceptance" of its obligations under Resolutions 687 or 1441. Specifically, Blix reported that Iraq had failed to account for 350 metric tons of bulk chemical warfare agents (including nerve gas), 2,700 metric tons of precursor chemicals, 300 metric tons of VX (the most toxic nerve gas), 25,000 liters of anthrax spores, and 30,000 special munitions, which Iraq admitted possessing in 1999. Based on this information, the United States and a coalition of approximately ten other countries decided that the only way to compel Iraq to disclose and dismantle its WMD was by force via a military invasion.

Russia, China, and France led a group of more than ten countries that voiced opposition to the invasion. These countries favored giving diplomatic efforts a greater opportunity to succeed in fulfilling the objectives expressed in Resolutions 687 and 1441. Opposition to the Iraq invasion grew as military operations unfolded. No WMD were ever discovered, thus undermining the original purpose for the invasion. The United States and its coalition partners were unable to bring security to Iraq after toppling its government. Instead, the country was overtaken by sectarian violence and an insurgency that left more than one million Iraqis dead, homeless, or displaced in other countries. Widely reported harsh treatment of prisoners of war and detainees held by U.S. and coalition forces within Iraq, at Guantanamo Bay, Cuba, and at secret prisons in other countries throughout the world further soiled the moral underpinnings of the war. In light of this information, many believe the Iraq invasion was unjust. Indeed, prosecutors in

Spain are considering indicting certain Bush White House officials for violating the RULES OF WAR in planning and carrying out the invasion.

The military conflicts in Afghanistan and Iraq demonstrate the difficulties of applying just-war principles in the new millennium. Not only can WMD bring death to tens of thousands of people, technology enables them to be delivered by conventional means during formal military operations or by unconventional means via a surreptitious terrorist attack on a civilian population. Waiting to defend one's country against a war of aggression waged by a state actor or terrorist organization can thus have deadly consequences. At the same time, acting preemptively to eliminate a threat before it fully materializes carries its own perils, including incurring the wrath of other countries in the community of nations and placing your own soldiers at risk in foreign military campaigns.

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CROSS REFERENCES

Rules of War; War Crimes.

JUSTICE

The proper administration of the law; the fair and equitable treatment of all individuals under the law. A title given to certain judges, such as federal and state supreme court judges.

JUSTICE DEPARTMENT

The Department of Justice (DOJ) is the executive branch department responsible for handling the legal work of the federal government. Headquartered in Washington, D.C., the DOJ is the largest legal organization in the United States, with more than 100,000 employees nationwide and a budget of approximately $30 billion.

The DOJ comprises many administrative units whose responsibilities involve either representing the United States' interests in court or enforcing federal laws. Many of the department's activities involve traditional legal and investigative functions, such as filing suits on behalf of the United States or apprehending criminals. Other department functions are administrative. For example, the Office of Policy Development is devoted to long-term policy planning.

Department Leadership

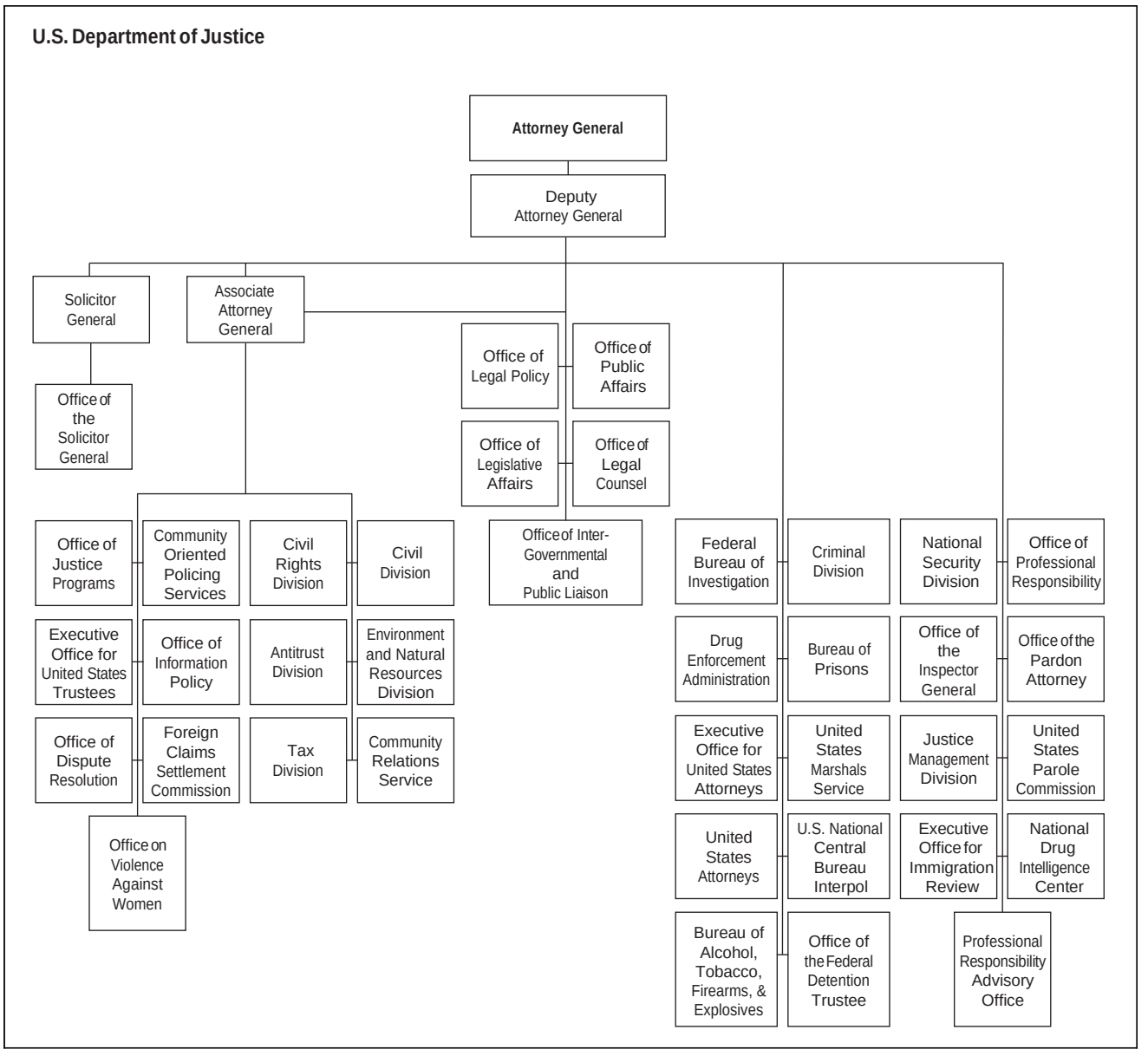
At the top of the department is the attorney general, who is appointed by the president and must be confirmed by the Senate. A key member of the president's cabinet, the attorney general supervises the many divisions, bureaus, and offices of the DOJ. Unlike other cabinet members, however, the attorney general also functions as a practicing attorney, serving as the president's legal adviser.

Below the attorney general are the deputy attorney general, the associate attorney general, and the SOLICITOR GENERAL. Although the deputy attorney general is officially the second-highest position at the DOJ, the office of associate attorney general, created in 1977, is often considered to be equally powerful. The deputy attorney general and the associate attorney general divide the department's administrative responsibilities between them, providing direction to the organizational units in the department. They also advise the attorney general on policy matters. The solicitor general is primarily responsible for supervising and conducting government litigation before the federal appellate courts, including the U.S. Supreme Court.

Department Structure

The DOJ is composed of several different units, including divisions, bureaus, and offices. The government's legal business is handled by the department's six litigating divisions: Antitrust, Civil, CIVIL RIGHTS, Criminal, Environment and Natural Resources, and Tax. Each of these divisions is headed by an assistant attorney general. These divisions handle cases involving the United States that have a broad legal impact.

Nationwide, the government is represented by 93 U.S. attorneys, who conduct all federal court cases and some federal investigations in their districts. Each state has at least one U.S. attorney, and some of the larger states are divided into districts that each have a U.S. attorney. The U.S. attorneys handle the majority



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of cases in which the federal government is a party. Although the U.S. attorneys report to the DOJ, they traditionally operate with a fair amount of independence and autonomy. Each U.S. attorney is appointed by the president and confirmed by the Senate to a four-year term.

The several bureaus within the DOJ are concerned with various aspects of law enforcement. The U.S. MARSHALS SERVICE (USMS) is the country's oldest law enforcement agency, having begun as a group of 13 marshals appointed by GEORGE WASHINGTON; in the early 2000s, the USMS has 94 marshals and is primarily responsible for providing court security, transporting prisoners, apprehending fugitives, protecting witnesses, and executing federal court orders. The FEDERAL BUREAU OF INVESTIGATION (FBI) is the government's major investigatory agency and the largest unit within the DOJ; the FBI pursues information concerning federal violations, collects evidence in cases involving the United States, and performs other duties assigned by law or by the president. The DRUG ENFORCEMENT ADMINISTRATION (DEA) combats drug trafficking, investigating major drug dealers, helping to prepare cases against them, and helping foreign governments pursue drug dealers. Also under the DOJ's umbrella are the Bureau of Prisons

(BOP), which oversees the federal prison system, and the Office of Justice Programs (OJP), which administers crime prevention and deterrence programs.

The DOJ also houses several offices that provide administrative support functions. These include the Office of Legislative Affairs, which coordinates the DOJ's relationship with Congress; the Office of Legal Counsel, which helps the attorney general to furnish legal advice to the president; the U.S. Parole Commission, which administers the parole system for federal prisoners; the Executive Office for U.S. Trustees, which administers the handling of BANKRUPTCY cases; and the Foreign Claims Settlement Commission, which handles cases against foreign governments for losses sustained by U.S. citizens.

The Bureau of Justice Statistics is another important component of the DOJ. The bureau, which was established in 1979, is responsible for the collection and analysis of criminal justice statistics at the state and federal levels. It issues annual reports on criminal victimization, populations under correctional supervision, and federal criminal offenders and case processing. It also issues periodic reports on the administration of law enforcement agencies and correctional facilities, prosecutorial practices and polices, state court case processing, FELONY convictions, characteristics of correctional populations, criminal justice expenditure and employment, and civil case processing in state courts.

History of the Department

The position of attorney general has its roots in medieval ENGLISH LAW. The title *attorney general* can be traced to 1398, when the Duke of Norfolk employed attorneys general to witness his banishment. In the years following, the king or queen and other nobles employed attorneys to appear in court on their behalf. In time, the office of the king's or queen's attorney became a privileged and powerful position. The attorney general, as the position was called after 1461, became an important political and legal adviser, first to the monarch and later to the House of Commons and the government in general.

When English settlers established colonies in North America, they included the office of attorney general in the colonial governments they created. Virginia was the first colony to appoint an attorney general, in 1643, followed by Rhode Island in 1650, and Maryland in 1660. By the end of the seventeenth century, most of the colonies had their own attorneys general. By 1776, a fairly consistent system of courts and law officers had been established in the colonies. With the American Revolution, British officeholders were simply replaced with Americans.

When the Constitution was written in 1789, the Framers did not specifically designate an office of attorney general, instead leaving such administrative details to be determined by statute. The attorney general was created by the JUDICIARY ACT OF 1789, which specified that the office should be filled by "a meet person, learned in the law," who would "prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and ... give his advice and opinion upon questions of law when required by the PRESIDENT OF THE UNITED STATES, or when requested by the heads of any of the departments." The act gave the attorney general limited powers and resources, including no provisions for staffing or office expenses. The person filling the office was expected to pay for such items. Because the position of attorney general was originally meant to be a part-time position, the salary was set at just $1,500 per year, and the officeholder was expected to maintain a private legal practice.

The first person to fill the position of attorney general was EDMUND RANDOLPH, of Virginia, who was George Washington's personal attorney. Although the attorney general initially was not a member of the president's cabinet, Washington valued Randolph's advice so much that he asked Randolph to sit in on his cabinet meetings. Ever since then, the position of the attorney general has been recognized as a cabinet post.

In addition to the office of attorney general, the Judiciary Act of 1789 established the U.S. district attorneys (now called U.S. attorneys) and the U.S. marshals, who represented the federal government in court and enforced federal laws, respectively, at the state and local levels. Although these officials were statutorily under the supervision of the president, they actually operated with very few checks. To make the government's legal work more controllable and consistent, Attorney General Randolph attempted to bring the U.S. attorneys and marshals under his supervision, arguing that

such centralization would help him to secure the government's legal interests. However, the legislation that Randolph recommended failed in Congress.

This division of the government's legal work—among the attorney general, the district attorneys and marshals, and also solicitors hired by individual executive departments—resulted in uncoordinated, inconsistent, and inefficient legal service to the federal government. Presidents and attorneys general made several attempts to centralize the government's legal services, but Congress was leery of giving the executive branch more power and therefore did not pass the necessary legislation.

In the early nineteenth century, the office of the attorney general expanded slowly. The workload was light, and until 1814 the attorney general was not required to reside in Washington, D.C., except when the U.S. Supreme Court was in session. Significant changes were made, however, when WILLIAM WIRT, attorney general under President JAMES MONROE, took over the office in 1817. Finding that previous attorneys general had kept no records of their work, Wirt established a formal system for recording his official actions and decisions so that future attorneys general would have a record of precedents to follow. Wirt also expanded the duties of the office and created formal operating procedures, greatly increasing his workload. Congress compensated Wirt for his efforts, increasing his salary to $3,500 and providing a clerk and office expenses. These funds, however, were one-time appropriations only; not until 1831 did Congress begin making regular appropriations for office expenses and book purchases.

The next attorney general to make significant changes in the office was CALEB CUSHING, who was appointed attorney general by President FRANKLIN PIERCE in 1853. Unlike his predecessors, Cushing left his own private legal practice and transformed the office of attorney general into a full-time position. Cushing expanded the work performed by the department and was also given additional responsibilities by Congress, including advising treaty commissioners, examining government land titles, administering government patents, and compiling and publishing federal laws. To enable Cushing to complete this work, Congress in 1859 authorized the appointment of an assistant attorney general, who was given control of the U.S. district attorneys. Congress also raised the attorney general's salary to $6,000, finally making it equal to the salaries of other cabinet members.

With the onset of the Civil War, the government's need for legal services and representation increased drastically. All across the country, claimants were filing suits in cases involving issues such as property titles and personal rights. The attorney general's office did not have the resources to handle these cases, nor did it have adequate authority over the district attorneys in the states. The various executive departments were forced to hire outside counsel to represent the government, resulting in enormous costs—nearly $500,000 over four years. These totals came to the attention of Congress, which was trying to curb expenses in the aftermath of the war. To try to economize on the government's legal bills, Congress passed the Judicial Act of 1870, which created the DOJ. The staff was increased by two assistants and a solicitor general, who was to share the attorney general's task of representing the federal government before the U.S. Supreme Court. The act also gave the attorney general positive authority over the U.S. district attorneys and marshals. Although the creation of the DOJ did not materially change the duties of the attorney general, it significantly changed the nature of the job by making it an administrative position that is responsible for an official bureaucracy.

Even with the creation of the DOJ, the federal government's legal work suffered from a lack of coordination because individual executive departments continued to retain their own solicitors. These solicitors provided legal advice to their departments and claimed the right to represent the departments in court. The conflicts and confusion that were created between the departments and the DOJ came to a head during WORLD WAR I, when many new federal government agencies and departments were created, each claiming the right to conduct its own legal work. In response, President WOODROW WILSON issued an executive order (Exec. Order No. 2877 [1918]) requiring all government law officers to operate under the supervision of the DOJ. By the 1920s, administrative chaos returned as individual departments again tried to conduct their own legal work. In 1933, President FRANKLIN D. ROOSEVELT issued another executive order (Exec. Order No. 6166 [1933]) consolidating all the government's legal work under the DOJ and the attorney general.

The September 11, 2001, terrorist attacks on the United States led to substantive and organizational changes for the DOJ. The USA PATRIOT Act ("Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism"), passed by Congress in October 2001, granted the attorney general more surveillance powers with less judicial supervision. The act also gave the attorney general more power to detain and deport non-citizens, with little or no judicial review.

After the SEPTEMBER 11 ATTACKS, the INS faced increasing criticism for its failure to monitor the hijackers and for its alleged inability to modernize its management system. As a result, the functions of the INS were transferred to agencies within the DEPARTMENT OF HOMELAND SECURITY, following its establishment in 2002. The responsibilities held by the former INS are now undertaken by the U.S. Citizenship and IMMIGRATION Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and the U.S. Customs and Border Protection (CBP).

A controversy arose in the DOJ during President George W. Bush's administration when, on December 7, 2006, seven U.S. attorneys were fired mid-term. Two other U.S. attorneys had likewise been removed from their positions earlier in 2006. The termination of the U.S. attorneys led to an investigation by Congress, in which it was alleged that the DOJ and President Bush were using the positions for partisan political purposes. By September 2007, nine senior DOJ officers associated with the firings had resigned. Among those stepping down was ALBERTO GONZALES, the U.S. attorney general. A 2008 report issued by the DOJ inspector general found that the firings had been fundamentally flawed and called for the appointment of a special prosecutor to investigate the matter further.

Many units of the federal government continue to employ their own legal counsel, but such attorneys generally are restricted to rendering legal advice to that department alone and are not permitted to represent the government in court. Tensions sometimes arise when an executive department and the DOJ take contrary positions on an issue in litigation. When that happens, the attorney general and the solicitor general must decide which department's stand will be taken.

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JUSTICE OF THE PEACE

A judicial officer with limited power whose duties may include hearing cases that involve civil controversies, conserving the peace, performing judicial acts, hearing minor criminal complaints, and committing offenders.

Justices of the peace are regarded as civil public officers, distinct from peace or police officers. Depending on the region in which they serve, justices of the peace are also known as magistrates, squires, and police or district judges. In some districts, such as the District of Columbia, justices of the peace are considered officers of the United States. In other regions, their jurisdiction is limited to a state, city, precinct, county, or township.

The position of JUSTICE OF THE PEACE originated in England in 1361 with the passing of the Justice of the Peace Act. In colonial America the position, with its judicial, executive, and legislative powers, was the community's main political force and therefore the most powerful public office open to colonists. Legal training was not a prerequisite.

Maintaining community order was a priority in the colonial era. The justice of the peace in this period was responsible for arresting and arraigning citizens who violated moral or legal standards. By the early 1800s, the crimes handled by the justice of the peace included drunkenness, adultery, price evasion (selling below a minimum price fixed by law), and

public disorder. Justices of the peace also served as county court staff members and heard GRAND JURY and civil cases. The increasing number of criminal, slave, and tax statutes that were passed during the 1800s also broadened the enforcement powers of the justice of the peace.

In the early twenty-first century, justices of the peace deal with minor criminal matters and preside only in the lowest state courts. Their legal duties encompass standard judicial tasks such as issuing arrest or search warrants, performing MARRIAGE ceremonies, handling routine traffic offenses, determining PROBABLE CAUSE, imposing fines, and conducting inquests.

The duties of a justice of the peace vary by statute, and it is the justice's responsibility to know which actions are within the scope of his or her jurisdiction. For example, a few statutes do not allow justices of the peace to be involved in the operation of another business or profession; however, they can invest in or receive a salary from another business, as long as they are not involved with its operation.

Justices are often considered conservators of the peace. They can arrest criminals or insane people, order the removal of people who behave in a disorderly fashion in a public place, and carry out other duties designed to maintain or restore a peaceful community.

Justices of the peace have limited power in criminal and civil cases. They have jurisdiction over minor criminal matters, including misdemeanors, infractions, and petty offenses. Their powers of civil jurisdiction are determined by the respective statutes that govern their position. At the highest level, a justice may handle cases that involve contracts, torts, injuries to PERSONAL PROPERTY, and personal injuries such as libel, slander, FALSE IMPRISONMENT, and MALICIOUS PROSECUTION. Justices of the peace do not have jurisdiction over cases that involve real property titles, easements, or rights of way.

Depending on the tradition in the area where they serve, justices of the peace are either elected or appointed; the method by which they reach their office has no bearing on how much power they have. Appointments are typically handled by the state's legislative body or governor; however, this task may be delegated to local authorities, such as county supervisors or commissioners.

Once elected or appointed, and before taking office, a justice of the peace is required to take an oath and post an official bond. Some statutes also require new justices to sign a sworn statement that they have never been convicted of a MISDEMEANOR or FELONY.

The length of the term of a justice of the peace varies with the constitution or statute that created the position. If a vacancy is created before a term expires, a public official, such as the governor, fills the vacancy; some statutes require that a special election be held. The replacement justice of the peace usually completes only the remainder of the term or serves until the next scheduled election.

Justices of the peace can be removed from their position for a variety of reasons, including official misconduct or conviction for a misdemeanor or felony. They must have knowingly committed the inappropriate act or acts with improper motives. Usually, the statute that defines the position will outline the procedure for removing a justice of the peace from office. Ordinarily, the justice is served with a notice of the charge or charges and is given an opportunity to be heard before she or he is removed.

If a justice of the peace wishes to resign, he or she must present a letter of resignation to the appropriate official; once the resignation is accepted, it cannot be withdrawn.

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JUSTICIABLE

Capable of being decided by a court.

Not all cases brought before courts are accepted for their review. The U.S. Constitution limits the federal courts to hearing nine classes of cases or controversies, and, in the twentieth century, the Supreme Court has added further restrictions. State courts also have rules requiring matters brought before them to be justiciable.

Before agreeing to hear a case, a court first examines its justiciability. This preliminary

review does not address the actual merits of the case, but instead applies a number of tests based on judicial doctrines. At their simplest, the tests concern (1) the PLAINTIFF, (2) the adversity between the parties, (3) the substance of the issues in the case, and (4) the timing of the case. For a case to be heard, it must survive this review. In practice, courts have broad power to apply their tests: they commonly emphasize whichever factors they deem important. This irregularity has made the analysis of justiciability a difficult task for lawyers, scholars, and the courts themselves.

Behind the tests for justiciability are a number of legal doctrines. The Supreme Court has declared that the doctrines have both constitutional and prudential components: some parts are required by the Constitution, according to the Court's interpretation of Article III, and some are based on what the Court considers prudent judicial administration. This distinction has important consequences for the limits of judicial power. Congress has the authority to pass laws that override only the prudential limits of judicial review; it cannot pass laws that override constitutional limits. Thus, the Supreme Court has insulated the federal courts from congressional influence in some but not all areas of justiciability.

Among the most complex justiciability doctrines is standing, which covers the plaintiff. Standing focuses on the party, not on the issues he wishes to have adjudicated (*Flast v. Cohen*, 392 U.S. 83, 88 S. Ct. 1942, 20 L. Ed. 2d 947). A claimant said to have standing has been found by the court to have the right to a trial. To reach such a determination, the court uses several general rules. These rules require that the claimant has suffered an actual or threatened injury; that the case alleges a sufficient connection (or nexus) between the injury and the defendant's action; that the injury can be redressed by a favorable decision; and that the plaintiff neither brings a generalized grievance nor represents a third party. In addition, separate rules govern taxpayers, organizations, legislators, and government entities.

The question of justiciability also involves the legal relationship of the parties in the case, as well as the substance of their dispute. To be found justiciable, the case must involve parties who have an adversary controversy between them. Moreover, the issues in the controversy must be "real and substantial," and therefore more than mere generalized interests common to the public at large. A related rule forbids the federal courts to issue advisory opinions. Dating from the late eighteenth century, it holds that they must decline to rule on merely hypothetical or abstract questions. In addition, they are restricted from taking cases that address purely political questions, which are beyond management by the judiciary. Certain state courts do issue advisory opinions on legal questions.

The fourth concern of tests for justiciability, the timing of the case, is evaluated under the concepts of ripeness and mootness. The ripeness doctrine holds that a case is justiciable if "the harm asserted has matured sufficiently to warrant judicial intervention" (*Warth v. Seldin*, 422 U.S. 490, 95 S. Ct. 2197, 45 L. Ed. 2d 343 [1975]). The mootness doctrine prevents a court from addressing issues that are hypothetical or dead. A case may become moot because of a change in law or in the status of the litigants. Most commonly, it is held to be moot because the court is presented with a fact or event that renders the alleged wrong no longer existent. For example, in 1952 the Supreme Court refused to review a state court decision in a case challenging Bible reading in the public schools. The child behind the suit had already graduated, and the parents and taxpayers who brought the suit could show no financial injury (*Doremus v. Board of Education*, 342 U.S. 429, 72 S. Ct. 394, 96 L. Ed. 475). However, the Court did agree to hear the landmark ABORTION case *ROE V. WADE*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), even though the plaintiff was no longer pregnant. The Court gave as its reason the length of a woman's gestation period (nine months), which is too short to permit appellate review.

One reason justiciability is complex is that it is replete with numerous arcane rules and exceptions. Another is that courts apply it on an ad hoc basis, inconsistently choosing to emphasize one element of its tests over another. This fact has led legal scholars to despair of ever reaching a unified analysis of justiciability. Some have taken the cynical view that courts will find a case justiciable when they want to hear it, and refuse to find it justiciable when they do not wish to hear it.

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JUSTIFICATION

A sufficient or acceptable excuse or explanation made in court for an act that is otherwise unlawful; the showing of an adequate reason, in court, why a defendant committed the offense for which he or she is accused that would serve to relieve the defendant of liability.

A legal excuse for the performance or nonperformance of a particular act that is the basis for exemption from guilt. A classic example is the excuse of self-defense offered as justification for the commission of a murder.

JUSTINIAN I

The emperor Justinian I ruled the Eastern Roman, or Byzantine, Empire from 527 until 565. He is significant for his efforts to regain the lost provinces of the Western Roman Empire, his codification of ROMAN LAW, and his architectural achievements.

Justinian was born circa 482 in Pauresium, Illyricum (probably south of modern Niš, Serbia). Justinian came to the throne with the intention of reestablishing the Roman Empire as it had been before the provinces of the Western Roman Empire fell under the control of various Germanic tribes during the fifth century. To this end, he sent his armies against the Vandals in North Africa (roughly, modern Algeria and Tunisia), the Visigoths in Spain, and the Ostrogoths in Italy. The Vandals surrendered in 534, but the Visigoths and

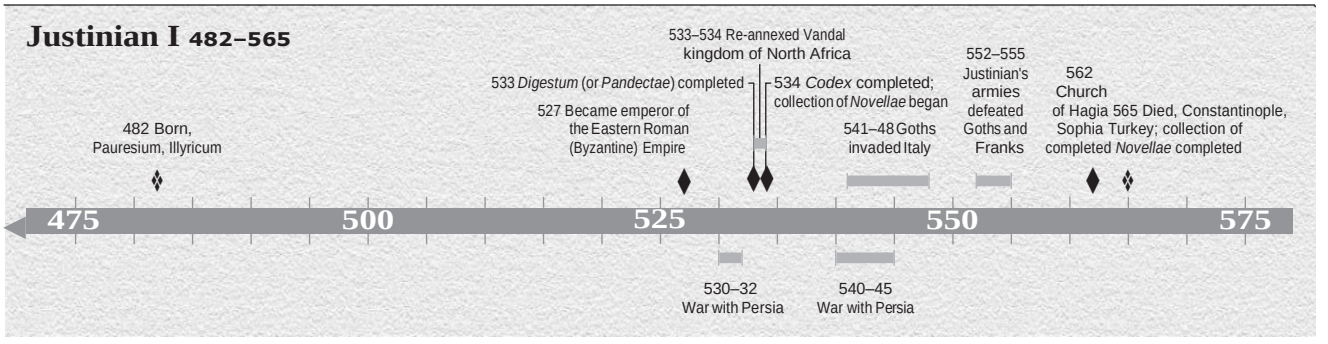
Justinian I.
LIBRARY OF CONGRESS

Ostrogoths proved more difficult. Justinian's forces never succeeded in capturing more than a small part of Spain and subdued Italy only after a devastating war that ended in 563 with Italy in ruins. Nonetheless, when Justinian died, he could claim with some justice that the Mediterranean Sea was once again a Roman lake.

Justinian's conquests proved ephemeral, however. Within four years of his death, northern Italy had fallen to the Lombards, another Germanic tribe, and by the early eighth century, Muslim armies had conquered North Africa and Spain.

Justinian's achievements in law were more long-lasting. Although several collections of imperial Roman legislation had been compiled in the past, by Justinian's reign even the most recent, the THEODOSIAN CODE (*Codex Theodosianus*), which had been issued in 438, was out-of-date. Accordingly in 528 Justinian established a commission of ten experts, including Tribonian, to prepare a new edition, which was completed in 534. The Code (*Codex*), as it was called,

JUSTICE IS THE CONSTANT AND PERPETUAL WISH TO RENDER TO EVERY ONE HIS DUE.
—JUSTINIAN I



contains 4,562 laws from the reign of Hadrian (117-138) to 534.

Roman law, however, encompasses both legislation and jurisprudence; that is, literature interpreting the law. Despite the importance of jurisprudence, no single collection had ever been made, and some important works were not readily available. Therefore in 530 Justinian ordered his commission to collect the most important writings on jurisprudence and to edit and clarify the texts whenever necessary. To complete their task, the commission had to read 2,000 books containing more than three million lines, but nonetheless they finished the compilation known as the Digest (*Digestum*), or Pandects (*Pandectae*), by December 533.

In the same year, the commissioners issued the Institutes (*Institutiones*), a handbook for law students. Although Justinian had only planned a tripartite compilation of Roman law, imperial legislation did not cease with the completion of the Code in 534. Therefore the edicts issued by Justinian after 534 were collected and came to be known as the Novels (*Novellae*), or New Laws. The Code, Digest, and Institutes had been written in Latin, the traditional language of Rome, but Justinian issued the Novels in Greek in recognition of the fact that Greek was the ordinary language of the Eastern Roman Empire. Together the Code, Digest, Institutes, and Novels came to be known as the CORPUS JURIS CIVILIS ("the corpus of civil law"). The *Corpus juris* not only preserved Roman law for later generations but, after the twelfth century when it came to be known and studied in western Europe, provided inspiration for most European legal systems.

Justinian is also known for the extensive building program that he undertook both in the East and in Italy. The church of Hagia Sophia in Constantinople, which was completed in 562, is considered one of the finest examples of Byzantine architecture. Justinian died November 14, 565, in Constantinople, now Istanbul, Turkey.

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JUVENILE LAW

Juvenile law is an area of the law that deals with the actions and well-being of persons who are not yet adults.

In the law, a juvenile is defined as a person who is not old enough to be held responsible for criminal acts. In most states and on the federal level, this age threshold is set at 18 years. In Wyoming, a juvenile is a person under the age of 19. In some states, a juvenile is a person under the age of 17, and in Connecticut, New York, and North Carolina, a juvenile is a person under the age of 16. These age definitions are significant because they determine whether a young person accused of criminal conduct will be charged with a crime in adult court or will be required to appear in juvenile court.

Juvenile courts generally have authority over three categories of children: juveniles accused of criminal conduct; juveniles neglected or abused by their parents or in need of assistance from the state; and juveniles accused of a STATUS OFFENSE. This last category refers to conduct that is prohibited only to children, such as absence from school (truancy), flight from home, disobedience of reasonable parental controls, and purchase of alcohol, tobacco, or PORNOGRAPHY.

Originally the term *juvenile delinquent* referred to any child found to be within the jurisdiction of a juvenile court. It included children accused of status offenses and children in need of state assistance. The term *delinquent* was not intended to be derogatory: Its literal meaning suggested a failure of parents and society to raise the child, not a failure of the child.

The modern trend is to separate and label juveniles based on the reason for their juvenile court appearance and the facts of their case. Many states have created three categories for juveniles: delinquents, abused or neglected children, and children in need of services. *Delinquents* are juveniles who have committed acts that would result in criminal prosecution if committed by an adult. *Abused* or *neglected children* are those who are suffering from physical or emotional abuse or who have committed status offenses or petty criminal offenses. *Children in need of services* are ones who are not abused or neglected but are needy in some other way. These children are usually from impoverished homes and require improved nutrition and basic health care.

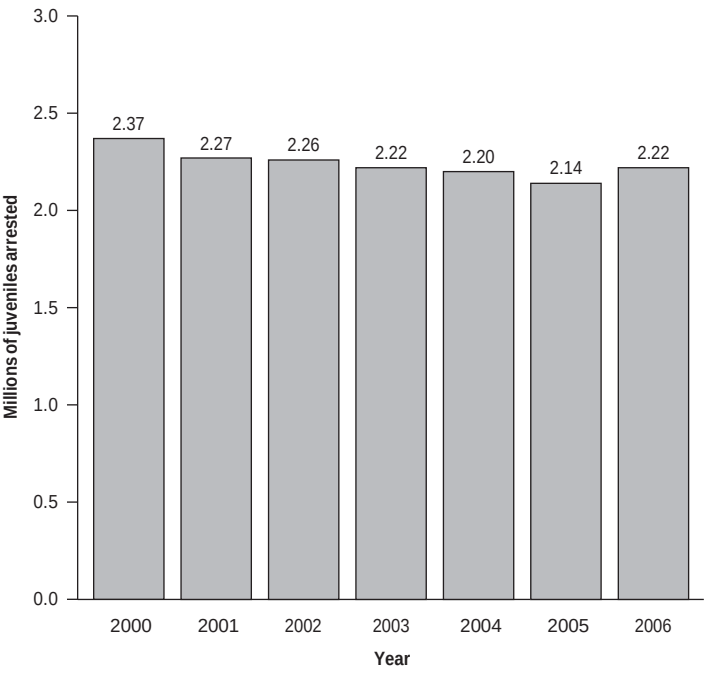
Generally, the procedures for dealing with abused, neglected, and needy children are less

formal than the procedures for dealing with alleged delinquents. The subsequent treatment of nondelinquent juveniles by the courts is also markedly different from the treatment of delinquents. Separation of noncriminal cases from criminal cases removes some of the stigma attached to appearance in juvenile court.

The mission of juvenile courts differs from that of adult courts. Juvenile courts do not have the authority to order punishment. Instead, they respond to juvenile misconduct and misfortune by ordering rehabilitative measures or assistance from government agencies. The juvenile court response to misconduct generally is more lenient than the adult court response.

Juvenile court proceedings are conducted in private, whereas adult proceedings are public. Also, adult criminal courts focus on the offense committed and appropriate punishment, whereas juvenile courts focus on the child and seek to meet the child's needs through rehabilitation, supervision, and treatment. Adult courts may deprive adults of their liberty only for the violation of criminal laws. Juvenile courts, by contrast, are empowered to control and confine juveniles based on a broad range of behavior and circumstances.

Juvenile Arrests, 2000 to 2006



Juveniles are classified as persons between the ages of 10 and 17.

SOURCE: U.S. Department of Justice, Office of Juvenile Justice & Delinquency Prevention, Easy Access to FBI Arrest Statistics.

ILLUSTRATION BY GGS CREATIVE RESOURCES. REPRODUCED BY PERMISSION OF GALE, A PART OF CENGAGE LEARNING.

History

Before the nineteenth century, children were generally considered to be young adults, and they were expected to behave accordingly. Children over the age of seven years who were accused of crimes were prosecuted in adult court. If convicted they could be confined in an adult prison. By the nineteenth century, most states had created separate work farms and reform schools for convicted children, but some states still sent children to adult prisons. Juveniles were not always rehabilitated in prison. After interacting with adult criminals, they often emerged from prison with increased criminal knowledge and an increased resolve to commit crimes.

In the late nineteenth century, progressive social discourse caused a shift in the general attitude toward children. Social, psychological, and behavioral experts proposed a new understanding of children based on their youth. The progressive theory declared that children should be considered innocent and vulnerable and as lacking the mental state required for them to be held responsible for a criminal offense because they have not acquired the wisdom that comes with age. It followed that juveniles should not be punished for their criminal behavior. Instead, they should be reformed, rehabilitated, and educated.

Juvenile crime was an important element, but not the driving force, behind the creation of the juvenile courts. Juvenile crime rates were quite low in the nineteenth century. Progressives claimed that the biggest problems facing children were neglect and poverty. The Industrial Revolution caused an increase in the number of urban poor. As poverty increased, so did the incidence of child abandonment, neglect, and abuse. This situation led to a political push for states to protect those who were in distress.

The perception of the government as a surrogate parent, known as PARENS PATRIAE, also led to the formulation of status offenses. These offenses derived from the idea that the government should help shape the habits and morals of juveniles. Status offenses reflected the notion that state control of juveniles should not be limited to enforcement of the criminal laws.

Trying Juveniles as Adults

In 1899 the United States made legal history when the world's first juvenile court opened in Chicago. The court was founded on two basic principles. First, juveniles lacked the maturity to take responsibility for their actions the way adults could. Second, because their character was not yet fully developed, juveniles could be rehabilitated more successfully than adult criminals. More than a century later, these principles remain the benchmarks of juvenile justice in the United States.

In the late 1990s and early 2000s, however, a growing number of juvenile criminals are being tried as adults—much the way they might have been before the advent of juvenile courts. In part this action stems from public outrage against children who, in increasing numbers, are committing violent crimes. Interestingly, the overall rate of juvenile crime has been decreasing since 1995. When people see gruesome images on television, such as the Columbine High School shootings in Littleton, Colorado, or the Springfield, Oregon, rampage of 15-year-old Kip Kinkel (who shot both his parents and two classmates), their impression is that juvenile crime is out of control.

Since the early 1990s, all states have adopted a "get tough" approach to juvenile justice as a response to the increasingly violent crimes committed by children. All states have a provision allowing prosecutors to try juveniles as young as 14 as adults under certain circumstances. In some states such as Indiana, South Dakota, and Vermont children as young as ten can be tried as adults.

An example of a "get tough" law is Michigan's Juvenile Waiver Law of 1997. This measure lowered the age that juveniles can automatically be tried as adults. In adopting this law, the state took away some of the judge's discretion in deciding whether a minor should be tried as a child or as an adult. Factors such as criminal history, psychiatric evaluation, and the nature of the offender's actions carry less weight when the judge is forced to enter an automatic adult plea.

Another example is California's Proposition 21, which was passed in 2000. This law permits prosecutors to send many juveniles accused of felonies directly to adult court. In effect, the prosecutors are the ones who decide whether a minor should be tried and sentenced within the adult system; this takes away the judge's discretion. Proposition 21 also prohibits the use of what was known as informal probation in felonies. This type of probation was offered to first-time juvenile offenders who admitted their guilt and attempted to make restitution. Finally, the proposition requires known gang members to register with police agencies and increases the penalties for crimes such as vandalism.

The U.S. Justice Department confirms that prosecutors are actively putting these new tougher laws to use against juvenile offenders. A 2008 Bureau of Justice Statistics report disclosed that in 1990, 2,301 juveniles were serving time in adult prison. By 2008, that number had risen to 7,703, out of a total U.S. prison population of 2.3 million adults.

The question of whether trying juveniles as adults is effective has generated considerable interest. Some studies have suggested that instead of solving a problem, trying juveniles in adult settings may be making things worse. Juveniles who serve time with adults have a higher recidivism rate than those who serve with other juveniles. Moreover, juvenile recidivists from adult facilities are more likely to commit more violent crimes than their counterparts in juvenile centers. Groups such as Human Rights Watch have complained that prison conditions for juveniles in adult prisons are poor and that juveniles in adult facilities are more likely to be assaulted or abused by other prisoners.

Putting aside the debate over whether minors belong in adult prisons, there is no question that the practice has gained support and is accepted by people who might have balked 20 years earlier. Whether the new "get tough" policy so many states embrace would work remained to be seen, but it was certainly expected to stay.

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CROSS REFERENCES

Courts; Penitentiary.

B

Instead, the state would have additional authority to prohibit a wide variety of acts that were considered precursors to criminal behavior.

The progressive theory won widespread support, and legislatures set to the task of conforming the legal system to the new understanding of children. The Illinois legislature was the first to create a separate court for children. The Juvenile Court Act of 1899 (1899 Ill. Laws 131, 131–37) created the first juvenile court and established a judicial framework that would serve as a model for other states.

The Illinois act raised the age of criminal responsibility to 16 years. This action meant that no person under the age of 16 could be prosecuted in adult court for a crime. Children accused of a crime would instead be brought to juvenile court.

The Illinois act gave the juvenile court additional authority to control the fate of a variety of troubled youths. These young people included:

> any child who for any reason is destitute or homeless or abandoned; or dependent on the public for support; or has not proper parental care or guardianship; or who habitually begs or receives alms; or who is found living in any house of ill fame or with any vicious or disreputable person ... and any child under the age of 8 years who is found peddling or selling any article or singing or playing any musical instrument upon the street or giving any public entertainment.

The Illinois act also created a new system for the disposition of juveniles. The act specified that all children found to be within the jurisdiction of the court should be given a level of care and discipline similar to "that which should be given by its parents" (§ 3 [1899 Ill. Laws 131, 132]). In all cases the court would attempt to place the child with a foster family or a court-approved family responsible for the custody of the child. If foster placement was not accomplished, the child would be placed in a reform school, where he or she would work and study. Juveniles found to be within the jurisdiction of the court remained under the court's control until the age of 21.

The terminology created for juvenile court was based on the terminology used in civil rather than criminal court. This language helped establish a nonthreatening environment. Juveniles were not charged by an indictment, as they would have been charged in adult court; rather, they were brought before the juvenile court by way of a petition. Juveniles were not arraigned by the court at their first appearance; instead, they were held to appear for an intake hearing. The process was not called a trial but an adjudication or a hearing. A juvenile found by the court to have committed a crime was not found guilty but was adjudged delinquent. Finally, instead of fashioning a sentence proportionate to the offense, the juvenile court disposed of the case by focusing on the best interests of the child. This terminology was used in every case, whether the petition concerned a juvenile charged with a crime or a juvenile in need of services or protection.

The Illinois act spawned similar acts in other states, and soon the progressive theory was put into practice across the United States. Juveniles were rehabilitated instead of punished; placed under the control of a juvenile court for a wide range of circumstances, some beyond their own control; and diverted from adult courts and prisons into an informal, relaxed system.

Modern Juvenile Law

The basic framework created by the first juvenile court act is largely intact. Rehabilitation, not punishment, remains the aim of the juvenile justice system, and juvenile courts still retain jurisdiction over a wide range of juveniles. The most notable difference between the original model and current juvenile law is that juveniles now have more procedural rights in court. These rights include the right to an attorney and the right to be free from self-incrimination.

All states now maintain a juvenile code, or set of laws relating specifically to juveniles. The state codes regulate a variety of concerns, including the acts and circumstances that bring juveniles within the jurisdiction of the juvenile court, the procedures for juvenile courts, the rights of juveniles, and the range of judicial responses to misconduct or to the need for services.

Juvenile law is largely a matter of state law. On the federal level, Congress maintains in the U.S. CODE a chapter on juvenile delinquency (18 U.S.C.A. §§ 5031 et seq.). The federal juvenile laws are similar to the state juvenile laws, but they deal solely with persons under the age of 18 who are accused of committing a federal crime, a relatively minor part of the juvenile justice system.

Juvenile courts exist in all states. They may be held in a building or room separate from adult courtrooms. The proceedings are private, and the identity of the juveniles and the records of the proceedings are also private.

Many juveniles come to juvenile court after being arrested by the police for a criminal act. Juveniles accused of crimes may be confined in a secure facility prior to the disposition of their case. Although they should be separated from adults prior to trial, many juveniles accused of crimes find themselves in adult jail populations.

Juveniles charged with a crime do not have the right to a jury trial in juvenile court. All juvenile cases are heard by a juvenile court judge. At trial a prosecutor representing the state presents evidence against the juvenile, and the juvenile has an opportunity to respond to the evidence. The juvenile has the right to receive notice of the charges against him or her, to confront and question witnesses, to be free from self-incrimination, and to be represented by an attorney. If the juvenile cannot afford an attorney, the juvenile court will appoint one, at no cost. The juvenile may not be adjudged delinquent unless the prosecution has proved its case BEYOND A REASONABLE DOUBT. This is the same high standard of proof required in adult criminal trials.

The harshest disposition of a juvenile case is commitment to a secure reformatory for rehabilitation. A secure reformatory is usually called a youth development center or something similar suggesting rehabilitation. Secure reformatories resemble adult prisons in that the inmates are locked inside. The professed goal of reformatories is rehabilitation, but the unspoken goal is often confinement of the juvenile for the protection of the community.

Not all findings of delinquency result in commitment to a secure facility. Juvenile courts usually have the discretion to order any combination of probation, COMMUNITY SERVICE, medical treatment, fines, and restitution. Probation releases the juvenile into the community under the supervision of a youth services officer. As a part of probation, juveniles often must fulfill certain conditions identified by the juvenile court and the youth services officer. These conditions can range from attending school and meeting certain performance requirements, to abstaining from drugs or alcohol. If the juvenile does not fulfill the conditions or commits another offense, she or he may be committed to a secure facility.

For repeated status offenses, a juvenile may be removed from home and placed in a state-approved foster home or some other state facility. Such facilities are usually not secure. However, juveniles ordered to such facilities are required to remain there for the period specified by the juvenile court judge. If they do not, they may be committed to a secure facility.

Juveniles do not have the right to a court-appointed attorney unless they face commitment to a secure facility that is operated by the state or federal government.

Status offenses do not always result in an appearance before juvenile court. Police officers often take intermediate measures before detaining a juvenile and beginning the petition process. These measures range from a simple reprimand to notification of the juvenile's parents. If a juvenile continues to commit status offenses after being excused by the police, he may be detained and eventually declared delinquent.

Abused and neglected juveniles usually come to the attention of juvenile courts through the petitions of state agencies or concerned private parties. In some cases, the juvenile may be suffering physical or emotional abuse. In other cases, the juvenile may be petitioned because he has committed a number of status offenses or petty offenses. A petition by the state usually seeks to remove the juvenile from the home for placement in foster care or a state facility.

When the state seeks to remove a juvenile from the home, the parents must receive an opportunity to be heard by the juvenile court. The juvenile is also allowed to testify, as are other witnesses. In addition to removing the juvenile from the home, the juvenile court may order that certain parties refrain from contacting the juvenile.

Children in need of services may also be petitioned by third parties. In some cases, the juvenile court may simply order counseling for the child or the child's parents. If the parents are financially incapable of supporting the child, the court will usually remove the child from the home until such time as they are financially able to raise the child.

Juveniles have the right to appeal juvenile court decisions to adult courts. The number of available appeals varies from jurisdiction to jurisdiction and can change within a jurisdiction. For example, before 1996 in New Hampshire,

Should the Juvenile Justice System Be Abolished?

The juvenile justice system seeks to rehabilitate children, rather than punish them for their juvenile criminal behavior. Since the late 1970s, critics of the juvenile courts have sought to abolish this system, arguing that it has failed in its rehabilitation efforts and in not punishing serious criminal behavior by young people. At the same time, defenders of the juvenile justice system contend that for the vast majority of children, the system is a worthwhile means of addressing problems. They maintain that a handful of violent juveniles who have committed serious crimes should not lead the public to believe that the system does not provide ways of changing behavior.

Critics note that the social and cultural landscape has changed considerably since the early 1900s when the juvenile justice system was established. Drugs, gangs, and the availability of guns have led to juveniles committing many serious crimes, including MURDER. Critics insist that juvenile courts are no longer adequate to address problems caused by violent, amoral young people.

Some argue that the perceived leniency of the juvenile justice system compounds its failure to rehabilitate by communicating to young people that they can avoid serious consequences for their criminal actions. The system engenders a revolving-door process which sends the message that young offenders are not accountable for their behavior. It is not until these repeat offenders land in adult criminal courts that they face real punishment for the first time. Thus, it may be better to punish a juvenile in the first instance, in order to deter future criminal activity.

Critics also claim it is wrong for juvenile offenders who have committed violent crimes to be released from the jurisdiction of the juvenile court at age 18 or 21. For one person to serve a few years in a juvenile correction facility for a crime that if committed by an adult would result in a ten-year sentence is unjust. The punishment for a crime, argue critics, should be the same, regardless of the age of the perpetrator.

Because of these deficiencies, critics contend, the system should be dismantled. Juveniles should be given full due process rights, including the right to trial by jury, just like adults. Freed from the juvenile justice system's rehabilitative ideology and restrictions on criminal due process rights, juveniles should stand accountable for their criminal actions. Once a juvenile is convicted, a trial court can determine the appropriate sentence.

Defenders of juvenile justice respond that a small minority of violent youths have created the misperception that the system is a failure. Though not every child can be rehabilitated, it is unwise to abandon the effort. In every other sphere of society, children are treated differently from adults. For the few juveniles who commit serious crimes and have poor prospects for rehabilitation, current laws provide that they be transferred to adult criminal courts. Allowing this alternative is a wiser course, defenders insist, than dismantling the system.

Defenders also contend that many of the alleged defects of the juvenile courts can be traced to inadequate funding and to the environment in which many juveniles are forced to live. They point out that violent subcultures and early childhood traumas caused by abuse, neglect, and exposure to violence make it more difficult to address individual problems. If the system were adequately funded, probation officers and court support personnel could more closely supervise children and rehabilitation efforts. If more energy were put into changing the socioeconomic situation of communities, rehabilitation efforts would improve and crime would decrease.

According to system supporters, placing juveniles in prison will not end the cycle of criminal behavior. The opposite result is more likely, for a teenager may feel stigmatized by a criminal conviction and may believe he is a lost cause, resulting in a return to crime. In addition, the huge amounts expended on incarceration could be better spent on counseling, education, and job training.

Defenders of the juvenile justice system argue that a criminal conviction can engender difficulties in obtaining employment and in negotiating other aspects of life. It is wrong, they contend, to label a person so early in life, for an action that may have been impulsive or motivated by peer pressure. Preserving the juvenile justice system allows many teenagers to learn from their mistakes without prejudicing their adulthood.

Finally, defenders note that many states have changed their laws to deal more severely with violent juvenile offenders. As long as there are ways of diverting these offenders into the adult system, defenders insist, the current juvenile justice system should be maintained.

As of 2009, the likelihood of abandoning the juvenile justice system appeared remote. The financial costs alone of integrating juvenile offenders into the adult criminal justice would be substantial. In addition, no credible organization had come forward with a blueprint for abolishing the system.

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juveniles could appeal to the New Hampshire Superior Court and then to the New Hampshire Supreme Court. In 1996 the state legislature changed the law to allow only one appeal by a juvenile to the state supreme court (N.H. Rev. Stat. Ann. § 169-B:29).

The period of time spent in a secure reformatory can vary. In many cases, a juvenile committed to a reformatory must remain there until reaching the age of 18. However, most states allow juvenile courts to retain jurisdiction over certain juveniles past the age of 18 at the request of a prosecutor or state agency representative. These holdovers are usually juveniles who have been adjudicated delinquent for a violent crime or have been adjudicated delinquent several times in separate proceedings.

Some states also allow a juvenile court to order incarceration in adult prison for juveniles who are found to be delinquent past a certain age. In New Hampshire, for example, a juvenile found to be delinquent based on a petition filed after the juvenile's sixteenth birthday may be sent to prison. If prison time is ordered, it cannot extend beyond the maximum term allowed for adults or beyond the juvenile's eighteenth birthday (N.H. Rev. Stat. Ann. § 169-B:19).

Some juveniles may be waived, or transferred, into adult court. In this procedure, the juvenile court relinquishes its jurisdiction over the juvenile. Waiver is usually reserved for juveniles over a certain age (varying from 13 to 15) who are accused of violent or other serious crimes. On the federal level, for example, a juvenile accused of committing a violent crime that is a FELONY may be tried in adult federal court. Waiver in federal court is also authorized for a juvenile accused of violating federal firearms laws or laws prohibiting the sale of controlled substances (18 U.S.C.A. § 5032).

The decision regarding relinquishing jurisdiction is usually made by the juvenile court. However, most jurisdictions have statutes that automatically exclude from juvenile court juveniles charged with violent or other serious crimes. In such cases, an adult court prosecutor is required to certify to the adult court that the juvenile should, by law, appear in adult court. This certification takes place in a hearing before the adult trial court. Juveniles have the right to an attorney at this hearing and the right to present any evidence that militates against transfer.

Waiver into adult court has serious consequences for juveniles. In adult court, juveniles face nearly all the punishments that may be inflicted on adults, including long-term imprisonment, life in prison, and in some cases, death. However, in 1988 the U.S. Supreme Court ruled that no state may execute a juvenile who was under the age of 16 at the time of the crime (*Thompson v. Oklahoma*, 487 U.S. 815, 108 S. Ct. 2687, 101 L. Ed. 2d 702 [1988]).

The treatment of juveniles who have committed SEX OFFENSES has stirred a national debate. Each state has passed a law referred to generally as Megan's Law, which requires convicted sex offenders to register with local police and allows communities to be notified that the offender resides in the area. A growing number of states now require juvenile sex offenders to register with law enforcement officers.

Statistics suggest that the number of sex offenses committed by juvenile offenders is on the rise. However, whether these offenders should register with local law enforcement upon their release from juvenile detention facilities remains highly controversial. Those individuals who oppose required registration for juvenile sex offenders argue that such registration undermines the very principals behind juvenile justice in the United States. These individuals assert that requiring juvenile sex offenders to register subverts attempts they make to live a normal life. They contend that registration reduces the possibility that the juvenile sex offender could become rehabilitated.

But other individuals argue that the trend of increasingly violent crimes being committed by juveniles warrants that children accused of a crime be treated the same as adults. That is, proponents of extending the registration requirement to juvenile sex offenders argue that public safety, proper punishment, and individual accountability mandate that these individuals continue to be tracked and watched. In addition, some argue that sex offenders, juvenile or otherwise, are untreatable, because various well-known studies demonstrate a high recidivism rate. That is, individuals who have a propensity to commit such crimes persist in perpetrating them. States such as Oklahoma and Texas have enacted bills extending their versions of Megan's Law to juvenile sex offenders.

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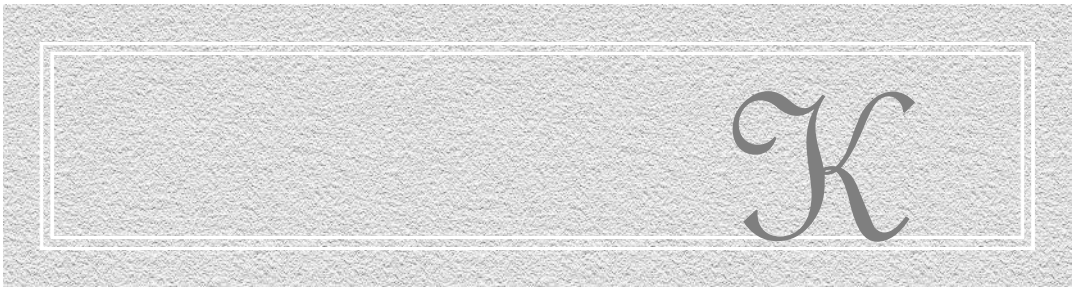
Child Abuse; Child Care; Child Labor Laws; Children's Rights; Due Process; Family Law; *Gault, In re*; Infants; Parent and Child; Right to Counsel.



KANGAROO COURT

[Slang of U.S. origin.] *An unfair, biased, or hasty judicial proceeding that ends in a harsh punishment; an unauthorized trial conducted by individuals who have taken the law into their own hands, such as those put on by vigilantes or prison inmates; a proceeding and its leaders who are considered sham, corrupt, and without regard for the law.*

The concept of kangaroo court dates to the early nineteenth century. Scholars trace its origin to the historical practice of itinerant judges on the U.S. frontier. These roving judges were paid on the basis of how many trials they conducted, and in some instances their salary depended on the fines from the defendants they convicted. The term *kangaroo court* comes from the image of these judges hopping from place to place, guided less by concern for justice than by the desire to wrap up as many trials as the day allowed.

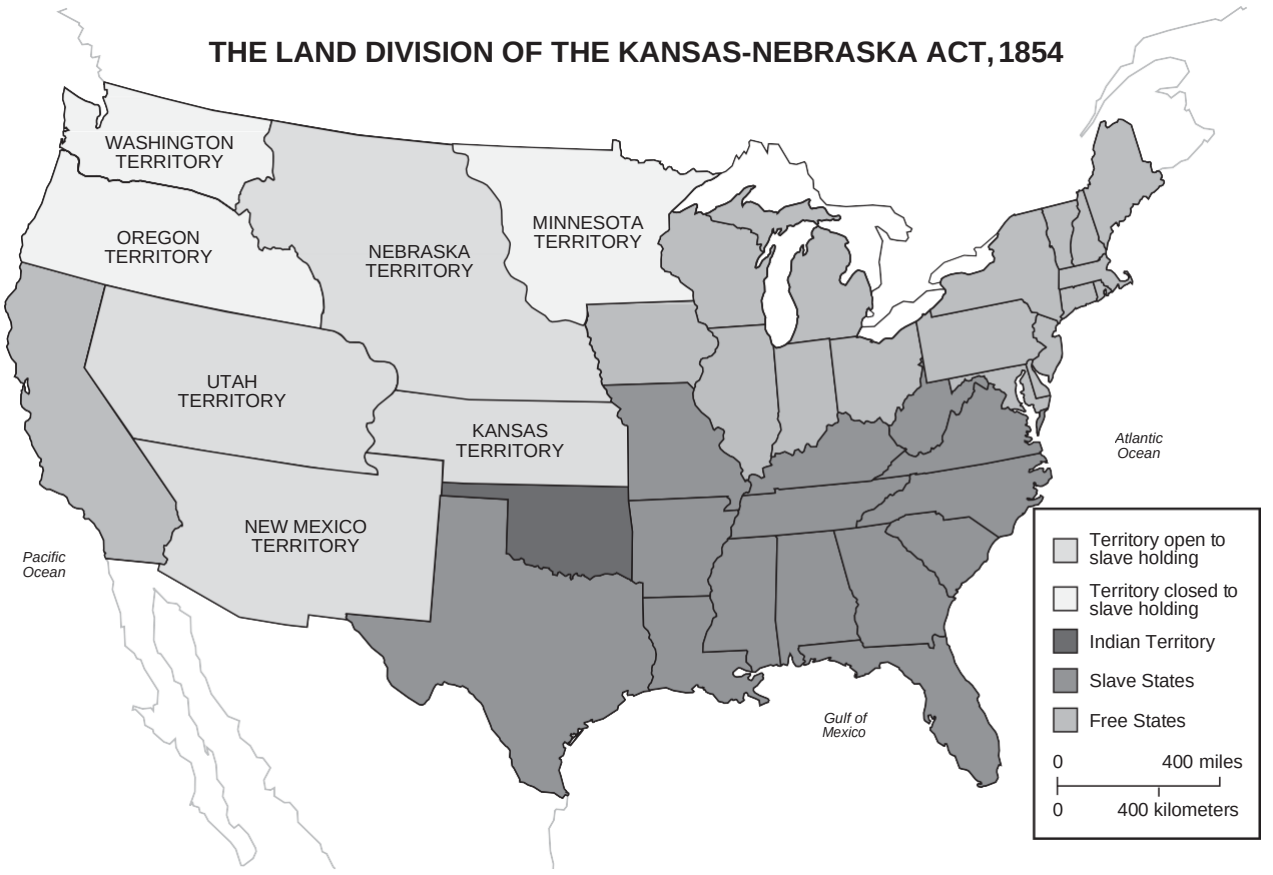
The term is still in common usage by defendants, writers, and scholars critical of a court or a trial. The U.S. Supreme Court has also used it. In IN RE GAULT, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), a case that established that children in juvenile court have the right to due process, the Court reasoned, "Under our Constitution, the condition of being a boy does not justify a kangaroo court." Associate Justice WILLIAM O. DOUGLAS once wrote, "[W]here police take matters in their own hands, seize victims, beat and pound them until they confess, there cannot be the slightest doubt that the police have deprived the victim of a right under the Constitution. It is the right of the accused to be tried by a legally constituted court, not by a kangaroo court" (*Williams v. United States,* 341 U.S. 97, 71 S. Ct. 576, 95 L. Ed. 774 [1951]).

KANSAS-NEBRASKA ACT

The Kansas-Nebraska Act of 1854 (10 Stat. 277) was a significant piece of legislation because it dealt with several controversial issues, including SLAVERY, western expansion, and the construction of a transcontinental railroad.

Slavery was a widely debated divisive issue for many years preceding the Civil War and there were several attempts at conciliation. The first of these was the MISSOURI COMPROMISE OF 1820 (3 Stat. 545), which decided the slavery question in regard to the creation of two new states, Missouri and Maine. The compromise declared that Maine was to be admitted as a free state, whereas Missouri was allowed to enter the Union with no restrictions regarding slavery. Subsequently, however, Missouri entered as a slave state. The compromise also prohibited the extension of slavery north of the $36^{0}30^{`}$ latitude which established the southern border of Missouri.

The COMPROMISE OF 1850 (9 Stat. 452) settled another controversy concerning slavery and



Map of the continental United States labelled The Land Division of the Kansas-Nebraska Act, 1854.

ILLUSTRATION BY CHRISTINE O'BRYAN. GALE GROUP.

instituted the doctrine of popular sovereignty, which permitted the residents of the area to decide the question. When Texas and other new territories were acquired as a result of the Mexican War in 1848, and California sought admission to the Union in 1849, the question again arose concerning the slave status of the new areas. The Compromise of 1850 provided that California be admitted as a free state and that the citizens of the new territories of New Mexico and Utah decide whether their states favored or opposed slavery, pursuant to the doctrine of popular sovereignty.

In 1854 the Kansas and Nebraska territories were the next areas subjected to a dispute over slavery. Senator STEPHEN A. DOUGLAS of Illinois drafted a bill calling for the creation of two states, Kansas and Nebraska, areas he felt were vital to the construction of a railroad to the Pacific coast. The question of slavery in these states would be decided by popular sovereignty. The reasons for Douglas's excessive concern are speculative but include his support of western expansion and his belief that the popular sovereignty doctrine would cause the least dispute; his hope that his business interests would profit by the construction of a transcontinental railroad with a Chicago terminus and a route through the new territories; and his desire to gain favor in the South to garner support for his future presidential aspirations.

In order for the Kansas-Nebraska Act to be effective, it was necessary to repeal the MISSOURI COMPROMISE and its boundary restrictions on the territorial extension of slavery. The new act was opposed by antislavery forces and subject to bitter dispute in Congress. President FRANKLIN PIERCE and a faction of Southern congressmen supported the bill and influenced its passage.

The provisions of the Kansas-Nebraska Act did not lead to the peaceful settlement of the issue as intended. In Kansas, the antislavery and proslavery proponents disagreed violently, undermining the effectiveness of the popular sovereignty doctrine. Two opposing governments were established, and acts of destruction

and violence ensued, including an ASSAULT on the antislavery town of Lawrence. In retaliation, abolitionist JOHN BROWN and his followers killed five settlers who advocated slavery. The phrase *Bleeding Kansas* was derived from this violence.

The Lecompton Constitution of 1857 was drafted based upon the results of a Kansas election that offered the voters the choice of limited or unlimited slavery. This angered the abolitionists, who refused to vote. President JAMES BUCHANAN approved the Lecompton Constitution and encouraged its acceptance by Congress, but Douglas and his supporters vehemently opposed the admission of Kansas as a slave state. Another election was held in 1858, and the people of Kansas voted against the Lecompton document; three years later, Kansas entered the Union as a free state.

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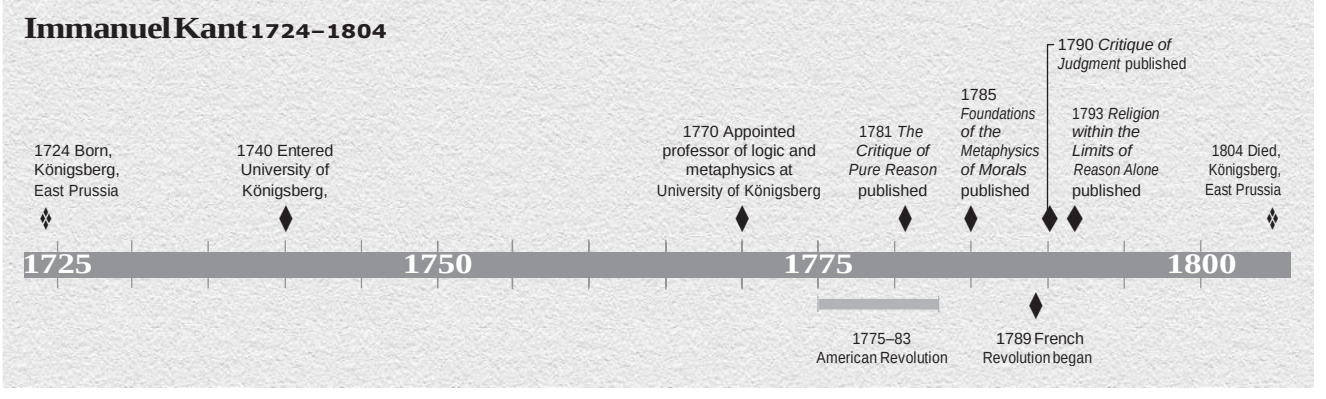
"Kansas-Nebraska Act" (Appendix, Primary Document); Railroad.

v KANT, IMMANUEL

Immanuel Kant shook the foundations of Western philosophy in the late eighteenth and early nineteenth centuries. This author and professor did his most important writing between 1781 and 1790 while working at the University of Königsberg, where he spent most of his life. Kant's philosophical model not only swept aside the ideas of the so-called empiricists and rationalists who came before him, it also had a lasting effect outside of philosophy, especially in the areas of ethics and the law. In the early twenty-first century, legal scholars still debate his ideas—and their sometimes startling implications—in relation to contemporary issues.

Immanuel Kant.
LIBRARY OF CONGRESS

Kant was born into a lower-middle-class family in East Prussia in 1724. A gifted student, he studied in a Latin school from age eight until age sixteen, when he entered the University of Königsberg to take up theology, natural science, and philosophy. The death of his father forced him to abandon his studies in order to work as a



private tutor, and he had to wait several years before returning to complete his education. By that time he was already writing serious books. From what is called Kant's precritical period, these early works are primarily scientific. In recognition of his talents, the university made him a lecturer and eventually a professor. He taught logic and metaphysics.

Twenty years later Kant attacked the reigning schools of thought. In this so-called critical period, he wrote his most famous book, *The Critique of Pure Reason* (1781). Kant's work examined the relation of experience and perception: He was concerned with how people know what they know, and just as important, the proper uses of the powers of reasoning. He argued that reality can be perceived only to the extent that it complies with the aptitude of the mind that is doing the perceiving. This places one kind of limitation on what can be known. Kant saw another limitation, too: Only phenomena—things that can be experienced—are capable of being understood; everything else is unknown. The human senses, therefore, take supreme precedence in determining what is real.

THE GREATEST PROBLEM FOR THE HUMAN SPECIES, THE SOLUTION OF WHICH NATURE COMPELS HIM TO SEEK, IS THAT OF ATTAINING A CIVIL SOCIETY WHICH CAN ADMINISTER JUSTICE UNIVERSALLY.
—IMMANUEL KANT

These theories have implications for conventional morality. Kant viewed God, freedom, and immortality as incomprehensible: they can only be contemplated; their existence can never be proved. Nonetheless, he argued, all three of them are important as the basis for morality. Kant believed that reason is insufficient to justify moral behavior. The justification for behaving morally has to come from people's sense of duty, which he called the categorical imperative.

Kant continued to develop his philosophy in subsequent books including *Critique of Judgment* (1790) and *RELIGION within the Limits of Reasons Alone* (1793). The latter enraged the government, resulting in its CENSORSHIP and an official order to Kant to write no more books about religion.

Philosophers have studied Kant's work for over two centuries, but legal thinkers outside of Europe have only widely treated it in recent years. In the late twentieth century, when many U.S. scholars of law turned to interdisciplinary studies that involved the fields of economics and textual analysis, Kant provided another model for argument. Kant's ideas cover the foundation of law while specifically addressing property, contracts, and criminal punishment. Kant proposed that punishment should be meted out strictly without exception—because of society's duty to seek retribution. "[I]f justice goes," Kant wrote in 1797, "there is no longer any value in men's living on the earth."

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v KATZENBACH, NICHOLAS DEBELLEVILLE

Nicholas deBelleville Katzenbach served as U.S. attorney general from 1965 to 1966, during the administration of President LYNDON B. JOHNSON. A distinguished lawyer and law professor before joining the JUSTICE DEPARTMENT in 1961, Katzenbach played a key role in federal efforts to end racial segregation in the South.

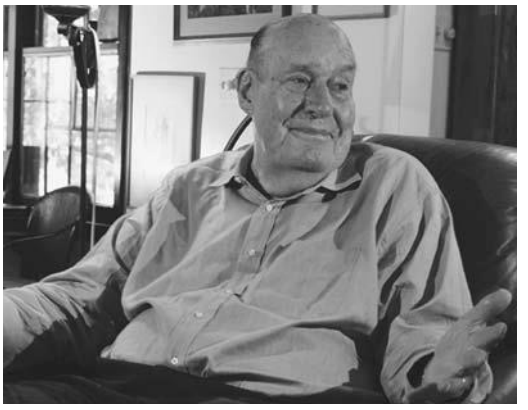
Katzenbach was born January 17, 1922, in Philadelphia and was raised in New Jersey. His father, Edward L. Katzenbach, was a lawyer who served as attorney general of New Jersey and ran unsuccessfully for governor of New Jersey. Katzenbach graduated from a private high school and in 1941 enlisted in the Army Air Force. During WORLD WAR II his bomber was shot down over north Africa, and he became a prisoner of war. He read so many books while a prisoner that following his repatriation in 1944, Princeton University allowed him to graduate two years early. After graduating in 1945, he earned a law degree at Yale Law School. In 1947 Katzenbach was a Rhodes scholar at Oxford University in England.

Katzenbach returned to the United States in 1949 and was admitted to the New Jersey bar in

1950. He was briefly an associate in his father's law firm before becoming in 1950 an attorney-adviser in the Office of General Counsel to the Secretary of the Air Force. During this period, Katzenbach first became acquainted with Johnson, then a senator from Texas. In 1952 Katzenbach left Washington, D.C., to teach law at Yale. In 1956 he moved to the University of Chicago Law School as a professor of law.

Attorney General ROBERT F. KENNEDY appointed Katzenbach as assistant attorney general of the Office of Legal Counsel in 1961 and promoted him to deputy attorney general in 1962. Katzenbach soon became a national figure, playing a prominent role in federal desegregation efforts in the South. In October 1962 JAMES H. MEREDITH, an African American, attempted to register for classes at the all-white University of Mississippi, in Oxford. Governor Ross Barnett pledged defiance of a federal court order mandating that Meredith be allowed to register. Katzenbach went to Oxford and directed U.S. marshals to protect Meredith as he registered. Riots erupted, and before federal troops arrived to restore order, Katzenbach ordered the marshals to fire tear gas into the unruly crowds.

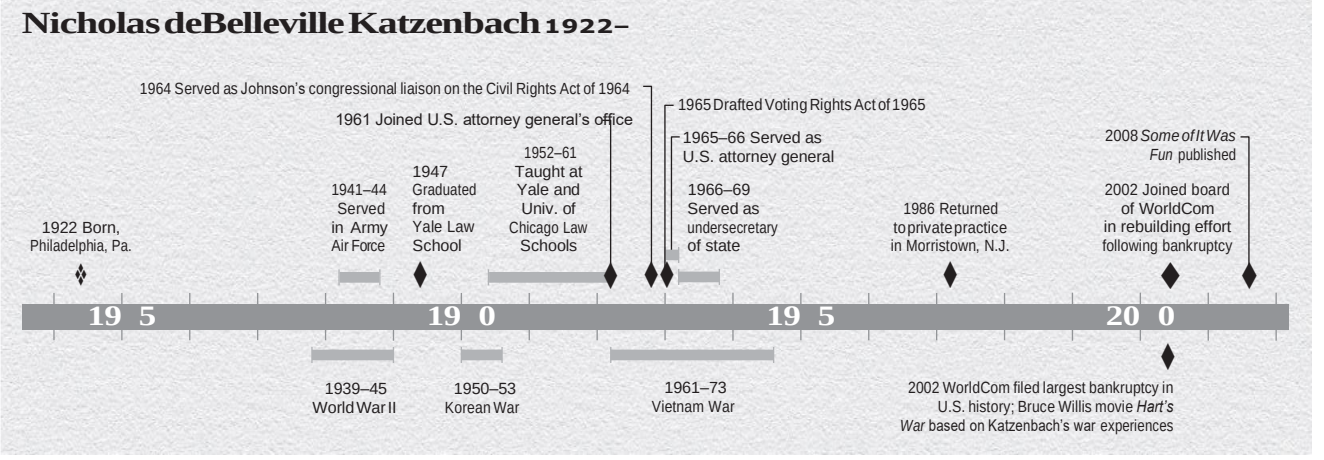
In 1963 Alabama Governor GEORGE WALLACE pledged to resist the integration of the University of Alabama. Wallace confronted Katzenbach at the university and refused to allow him to register James Hood and Vivian Malone. The nationally televised scene was a symbolic last stand for Wallace and other advocates of racial segregation. Once President JOHN F. KENNEDY ordered that state troops were to come under federal control to enforce the court order, Wallace ended his defiance.



Nicholas Katzenbach. AP IMAGES

Following the ASSASSINATION of John F. Kennedy, President Johnson announced his determination to pass a strong CIVIL RIGHTS act that would end racial discrimination in employment, education, and other spheres of life. Katzenbach was Johnson's congressional liaison, working with Senator HUBERT H. HUMPHREY (D-Minn.) and Senate minority leader Everett M. Dirksen (R-Ill.) to achieve a compromise that would ensure the act's final passage. The result was the landmark Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000a et seq.). The following year Katzenbach drafted the VOTING RIGHTS ACT OF 1965 (42 U.S.C.A. §§ 1973 et seq.), which prohibits states from imposing voting qualifications based on race, color, or membership in a language minority group. This legislation changed the South, as thousands of African Americans were allowed to register to vote for the first time.

I OBJECT TO SAYING WE ARE AT WAR HERE [IN VIETNAM], ALTHOUGH I REALIZE IN THE POPULAR SENSE THAT MAKES ME PERHAPS LOOK FOOLISH.
—NICHOLAS KATZENBACH



President Johnson appointed Katzenbach as attorney general in February 1965. Katzenbach continued his work on civil rights legislation and enforcement. In October 1966, Johnson, who was increasingly preoccupied with the growing U.S. involvement in Vietnam, named Katzenbach as undersecretary of state. In that position, Katzenbach became an administration spokesperson for Johnson's Vietnam policies, defending them before Congress on a regular basis.

Katzenbach left government at the end of the Johnson administration in January 1969, and joined International Business Machines (IBM), a large manufacturer that dominated the U.S. computer market. The DEPARTMENT OF JUSTICE had filed an antitrust lawsuit against IBM, and Katzenbach was brought into the corporation to lead the fight against it. For the next 13 years, Katzenbach and a host of attorneys fought the lawsuit, which ultimately was dismissed.

In 1986 Katzenbach left IBM and returned to the PRACTICE OF LAW in Morristown, New Jersey. Katzenbach has remained active in matters relating to law and politics. In the 1990s Katzenbach and former attorney general RICHARD THORNBURGH advocated for the release of Chinese dissidents Wei Jingsheng and Wang Dan. He was a witness in the IMPEACHMENT trial of President BILL CLINTON in 1998. In 2000 Katzenbach filed an amicus brief supporting Microsoft in its defense of an antitrust lawsuit brought by the Department of Justice. In 2002 Katzenbach was named to the board of directors and to a special investigative committee of telecommunications giant WorldCom, which was reorganizing after filing for Chapter 11 BANKRUPTCY. In 2004 Katzenbach was named non-executive chairman of telecommunications company MCI (which later merged with Verizon).

In 2008 Katzenbach's book, *Some of It Was Fun: Working with RFK and LBJ* was published. In its review, *Publisher's Weekly* stated that the tales, most of which had never been told, were "worth the price of admission."

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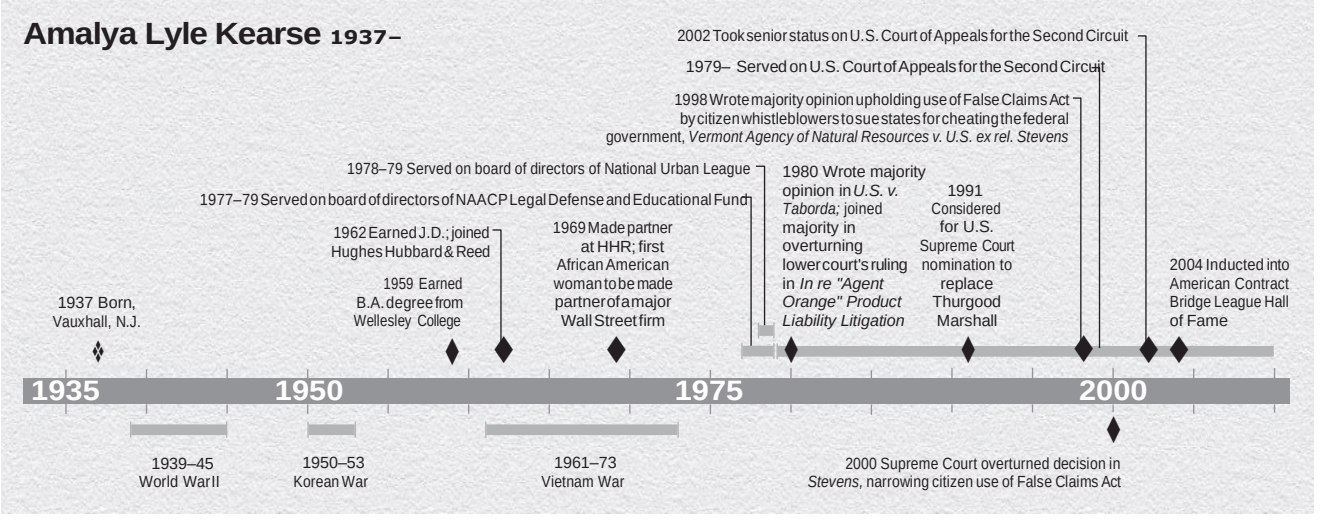
v KEARSE, AMALYA LYLE

Amalya Lyle Kearse is a judge with the U.S. Court of Appeals for the Second Circuit.

Kearse was born June 11, 1937, in Vauxhall, New Jersey. Her parents encouraged Kearse to develop her considerable intellect. Her father, the postmaster in her hometown, wanted to become a lawyer, but the Depression prevented him from pursuing his dream. Her mother was a medical doctor who later became an administrator in an antipoverty program. Kearse attended Wellesley College, where she earned her bachelor's degree in philosophy in 1959. "I can trace [the decision to become a litigator] back to a course in INTERNATIONAL LAW at Wellesley," she



said. "There was a MOOT COURT, and I found that very enjoyable." Kearse then enrolled at the University of Michigan Law School, and she graduated cum laude in 1962.

Kearse began her legal career with the Wall Street firm of Hughes, Hubbard, and Reed. After seven years of distinguished and diligent work, she was named a partner, becoming the first black female partner in a major Wall Street firm. Her colleagues have praised her for her incisive analytical skills. When asked about Kearse's qualifications, a senior partner at the Hughes, Hubbard firm said, "She became a partner here not because she is a woman, not because she is a black, but because she is just so damned good—no question about it."

Kearse's outstanding talents eventually came to the attention of President JIMMY CARTER, who named her to the U.S. Court of Appeals for the Second Circuit in 1979. She is the first black woman to serve on that court. During her tenure she has decided many influential cases. In 1980 she wrote the majority opinion in *United States v. Taborda*, 635 F.2d 131 (2d Cir. 1980), a case that concluded that the use of a high-powered telescope to observe drug activity inside an apartment without a warrant constituted an unreasonable search and violated the FOURTH AMENDMENT. In other cases, she joined the majority in upholding a New York state ban on school prayers (*Brandon v. Board of Education of Guilderland Central School District,* 635 F.2d 971 [2d Cir. 1980]) and helped overturn a lower court's ruling that Vietnam veterans could sue the manufacturers of Agent Orange for alleged damage (*In re "Agent Orange" PRODUCT LIABILITY Litigation,* 635 F.2d 987 [2d Cir. 1980]).

Kearse's name has been on the list of potential nominees to fill vacancies on the U.S. Supreme Court. In 1991 she was considered for the vacancy created by the retirement of Justice THURGOOD MARSHALL. After President George H. W. Bush's controversial nomination of CLARENCE THOMAS, who was eventually confirmed notwithstanding allegations that he had sexually harassed a former coworker, an opinion article in the *New York Times* urged Bush to nominate Kearse in Thomas's place. The article noted that, because of her years of distinguished service on the court of appeals, Kearse is "among the four or five persons most qualified for the High Court." The article concluded that "what is needed is an appointment that can unify the country is the assurance that the next Supreme Court nominee is a person of unquestioned excellence. Judge Kearse is that person" (*New York Times,* October 10, 1991). Kearse was considered for the Supreme Court again in 1994 when President BILL CLINTON was evaluating possible replacements for retiring justice HARRY A. BLACKMUN. Earlier, in 1992, Clinton had considered her for the post of attorney general.

Kearse is a member of the American Law Institute and a fellow in the American College of Trial Lawyers. She has been an adjunct lecturer at New York University Law School, a member of the Executive Committee of the Lawyers' Committee for CIVIL RIGHTS under Law, and a member of the President's Commission for Selection of Judges. She has also served on the boards of the National Association for the Advancement of Colored People's Legal Defense and Education Fund and the NATIONAL URBAN LEAGUE. Kearse has received many awards and honors, including the ORDER OF THE COIF and the Jason L. Honigman Award for outstanding contribution to a LAW REVIEW editorial board.

THE VERY FACT THAT A PERSON IS IN HIS OWN HOME RAISES A REASONABLE INFERENCE THAT HE INTENDS TO HAVE PRIVACY, AND IF THAT INFERENCE IS BORNE OUT BY HIS ACTIONS, SOCIETY IS PREPARED TO RESPECT HIS PRIVACY.
—AMALYA LYLE KEARSE

In 1999 Kearse wrote the majority opinion in a false claims case where a former Vermont Agency of Natural Resources attorney alleged that the agency had submitted false claims in regard to several grant programs. The court found that the ELEVENTH AMENDMENT did not bar the suit. The United States Supreme Court issued a 7–2 decision in the case, *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765 (2000), holding that private individuals have standing to bring so-called whistle-blower suits in federal court but that states cannot be included in the definition of persons who can be sued under the law. The Court did not explicitly decide whether the Eleventh Amendment protects states from being sued under the law.

Kearse is a top-rated bridge player who has written several books about the game. She has won the Women's Pairs Bridge Championship twice, its World Division once, and was the National Women's Teams Bridge Champion in 1987, 1990, and 1991. She was named Bridge Personality of the Year by the International Bridge Press Association in 1980.

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KEFAUVER INVESTIGATION AND KNAPP COMMISSION

The pervasive reach of ORGANIZED CRIME in the United States has made it a target of investigations and legal action since the nineteenth century. Two of the most noteworthy attacks were the Kefauver investigation in the 1950s and the Knapp Commission hearings in the 1970s. Both investigations brought a new focus to this fight; the Kefauver hearings gave it national prominence, and the Knapp hearings underscored what can happen when corrupt law enforcement officials ignore the criminal element.

Estes Kefauver, a U.S. senator from Tennessee, introduced Senate Resolution 202 in January 1950, which called for a national investigation of organized crime. The rapid growth of crime syndicates in major cities across the United States meant an increase in illegal gambling, drug trafficking, extortion, and PROSTITUTION. Many of the syndicate leaders had set up legitimate business fronts to hide their illegal operations. Kefauver believed that the syndicates had grown so strong that local law enforcement was unable to exert any control.

In May 1950 Kefauver and four other senators were named to a Special Committee to Investigate Organized Crime in Interstate Commerce. Because the committee's focus was interstate commerce, the hearings were held across the United States—14 cities in 15 months. Suspected and known organized crime leaders in these cities were interrogated by the five senators, which generated local interest. In Detroit, a local television station broadcast part of the hearings in that city. The Kefauver committee voiced disapproval of legalized gambling operations in Nevada and that disapproval was credited in part for helping defeat legalized gambling proposals on the ballot in Arizona, California, Massachusetts, and Montana.

When the Kefauver committee began hearings in New York City on March 12, 1951, a

New York City firemen watch William O'Dwyer, the city's former mayor, testify before the Kefauver Senate Crime Investigating Committee. These first major televised Senate hearings had an audience of 30 million.

BETTMANN/CORBIS.

KEFAUVER INVESTIGATION AND KNAPP COMMISSION 129

local station provided live broadcast feed to the major networks. The hearings were televised in 20 cities, ultimately generating an audience of 30 million. The Kefauver investigation marked the first time a major Senate hearing had been covered on national television, and it made a strong impression on the public. One of the most dramatic broadcasts was the testimony of syndicate leader Frank Costello. Costello, arguably the most important organized crime figure in the United States, did not want his face shown on television. The broadcasters complied and showed his hands instead. Costello's nervous hand movements were ultimately much more telling to viewers than his facial expressions would have been. While the hearings did not eliminate organized crime, they did weaken its hold; a number of syndicate figures were ultimately prosecuted by state and local authorities, many of whom were convicted and sentenced to prison.

Because many of the organized crime syndicates had ties to local Democratic politicians, many Democrats wanted Kefauver (himself a Democrat) to conduct a less ambitious investigation. Kefauver refused, and many well-known Democrats (including Senate majority leader Scott Lucas) were defeated in their bids for reelection during and even after the hearings had ended. Television made Kefauver a popular and easily recognizable figure, and he ran (albeit unsuccessfully) for president in 1952 and 1956.

Meanwhile, organized crime continued to flourish through the 1950s and into the 1960s. Part of the organized crime establishment in New York was thought to be bribing members of the city's police force, and in April 1970 the *New York Times* ran an article that alleged police corruption was widespread among the officers. According to the article, members of the force were accepting bribes from gamblers and illegal drug dealers and extorting money from local businesses. Almost immediately, New York mayor John V. Lindsay organized a five-member Commission to Investigate Alleged Police Corruption. Whitman Knapp, a federal judge, came on board to replace a departing member, and he became the group's chairman. It soon became known as the Knapp Commission.

The Knapp Commission took testimony from numerous police officers and civilians and discovered that there was systematic corruption throughout the force. The bribes, kickbacks, and extortion reported in the *New York Times* was indeed widespread and went through the ranks. Although clearly not all police officers were corrupt, some of those who were not nonetheless knew corruption was going on but chose not to do anything about it. The testimony of Detective Frank Serpico in particular drew considerable attention both inside and outside the police department. Serpico, who had been a member of the police force since 1960, had reported incidences of corruption to his commanding officers on numerous occasions, but no one had acted on them. He told the Knapp Commission that he had even met with key city officials, who also ignored his reports of corruption. It was Serpico and a fellow officer, David Durk, who had provided the *Times* with the information that led to its April 1970 story.

Serpico, who would later become the subject of a book and a motion picture, was ostracized by the police department because he was considered a "rat." Others believed that his charges were more a means of seeking publicity than exposing police corruption. Nevertheless, it was clear by the time the Knapp Commission made its final report that there were serious problems in the New York Police Department. Knapp blamed not only the police hierarchy but also the administration of Mayor Lindsay. Although Lindsay himself was never blamed for corruption, key officials in his administration who had the power to step in had done nothing.

Police Commissioner Frank Leary stepped down and was replaced by Patrick Murphy, who brought major reforms into the department. He made supervisors and inspectors more accountable for their officers, and he implemented preventive measures to ensure that corruption could be thwarted before it was allowed to take hold. Murphy, who stepped down in 1973, was credited with turning the police department around, improving morale among the officers, and regaining the public's trust in the police.

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CROSS REFERENCES

Congress of the United States; Organized Crime; Police Corruption and Misconduct.

KELLOGG-BRIAND PACT

The KELLOGG-BRIAND PACT, also known as the Pact of Paris, was a treaty that attempted to outlaw war (46 Stat. 2343, T.S. No. 796, 94 L.N.T.S. 57). The treaty was drafted by France and the United States, and on August 27, 1928, was signed by fifteen nations. By 1933 65 nations had pledged to observe its provisions.

Kellogg-Briand contained no sanctions against countries that might breach its provisions. Instead, the treaty was based on the hope that diplomacy and the weight of world opinion would be powerful enough to prevent nations from resorting to the use of force. This soon proved to be a false hope; though Germany, Italy, and Japan were all signatories, the treaty did not prevent them from committing aggressions that led to WORLD WAR II.

The origin of the Kellogg-Briand Pact was a message that the French foreign minister, Aristide Briand, addressed to the citizens of the United States on April 6, 1927, the tenth anniversary of the United States' entrance into WORLD WAR I. In this message Briand announced France's willingness to join the United States in an agreement mutually outlawing war. Such an agreement, Briand stated, would "greatly contribute in the eyes of the world to enlarge and fortify the foundation on which the international policy of peace is being erected." Briand's overture to the United States was part of a larger campaign that France was waging to form strategic alliances that would improve its national security. In addition, Briand was influenced by recent conversations with Nicholas Murray Butler and James Thomson Shotwell, U.S. academics who were leaders in the burgeoning U.S. political movement to outlaw war, also known as the OUTLAWRY movement.

Initially, Briand's offer generated little reaction in the United States. The U.S. State Department made no response, apparently considering Briand's statement to be simply an expression of friendship. Not until certain leaders in the peace movement, notably Butler, began to generate widespread public support for Briand's proposal did the government become involved. But by the middle of June 1927, France and the United States had begun diplomatic conversations aimed at reaching the sort of agreement Briand had proposed in his address.

On June 20 the State Department received the Draft Pact of Perpetual Friendship between France and the United States, written by Briand and transmitted through the U.S. ambassador in Paris. The draft contained just two articles: The first declared that France and the United States renounced war "as an instrument of their national policy towards each other," and the second declared that all conflicts between the two nations would be settled only by "pacific means." SECRETARY OF STATE FRANK B. KELLOGG and other officials in the U.S. State Department were uncomfortable about entering into such an agreement with France alone, fearing that it would amount to an indirect alliance that would deprive the United States of the freedom to act if France were to go to war with another country. Instead, U.S. officials preferred to expand the agreement into a multilateral treaty involving all the world powers except Russia. On December 28, therefore, Kellogg told Briand that the United States was prepared to enter into negotiations with France to construct a treaty that would condemn war and renounce it as an instrument of national policy; when concluded, the treaty would be open to signature by all nations.

France accepted the United States' offer, and treaty negotiations began in January 1928. By early April the four other Great Powers—Germany, Great Britain, Italy, and Japan—were invited to enter the discussions. Soon after, the invitation was extended to Belgium; Czechoslovakia; Poland; India; and the five British dominions, Australia, Canada, Irish Free State, New Zealand, and South Africa. Several of the parties wanted specific conditions and reservations included in the treaty. These issues were resolved, and on August 27, 1928, diplomats from the 15 countries met in Paris to sign the treaty. By 1933 50 additional countries had agreed to observe the treaty's provisions.

The final text of the Kellogg-Briand Pact, like the original draft, was extremely simple and contained just two principal articles. The first stated that the contracting parties "condemn[ed] recourse to war for the solution of international

controversies, and renounce[d] it as an instrument of national policy in their relations with one another." In the second the parties agreed that "the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise between them, shall never be sought except by pacific means." The treaty therefore outlawed war entirely, providing no exceptions to this general prohibition. The parties, however, generally recognized that war would be permissible in the case of SELF-DEFENSE; several signatories, including the United States, had submitted diplomatic notes prior to the treaty's ratification indicating their understanding that wars entered into in self-defense would be lawful.

When it was signed, the Kellogg-Briand Pact was considered a tremendous milestone in the effort to advance the cause of international peace. In 1929 Kellogg received the Nobel Peace Prize for his work on the treaty. Events soon showed, however, that the pact did not prevent or limit war between the nations. The primary problem was that the treaty provided for no means of enforcement or sanctions against parties who violated its provisions. In addition, it did not address the issues of what constituted self-defense and when self-defense could lawfully be claimed. Because of these large loopholes, the Kellogg-Briand Pact was ultimately an ineffective method for achieving the ambitious and idealistic goal of outlawing war.

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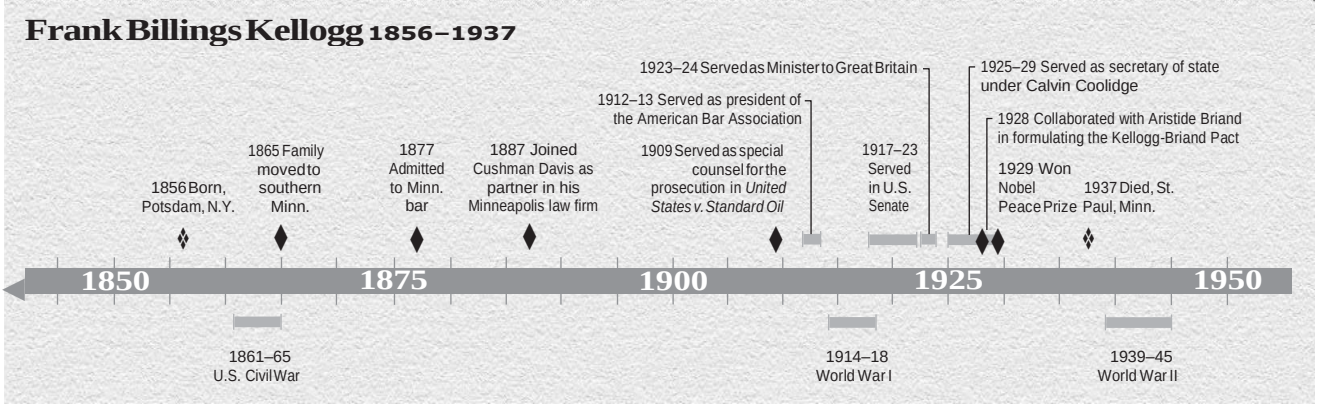
v KELLOGG, FRANK BILLINGS

Frank Billings Kellogg was born December 22, 1856, in Potsdam, New York. He moved to Minnesota at age nine, received an education in law, and was admitted to the bar in 1877. Kellogg subsequently received numerous doctor of laws degrees from various institutions, including McGill University, Montreal, 1913; New York University, 1927; Harvard, 1929; Brown University, 1930; and Occidental University, 1931. He also received two doctor of civil law degrees in 1929, from Trinity College in Connecticut and Oxford University.

After his ADMISSION TO THE BAR, Kellogg performed the duties of city and county attorney for St. Paul, Minnesota, and established a legal practice, specializing in corporation law. His expertise earned him the position of special counsel for the United States, and he participated in the case against the General Paper and Standard Oil trusts (*United States v. Standard Oil Co.,* 212 U.S. 579, 29 S.Ct. 689, 53 L.Ed. 259 [1909]). He served as special counsel of the INTERSTATE COMMERCE COMMISSION to probe into the speculative dealings concerning the Harriman railroads.

Kellogg began a phase of government and diplomatic service in 1917, when he became U.S. Senator from Minnesota for a six-year term. He followed this with a one-year appointment as minister to Great Britain. From 1925 to 1929, he

THERE ARE ONLY TWO MEANS OF ENFORCING A TREATY. ONE IS BY WAR, THE OTHER IS BY THE OVERPOWERING STRENGTH OF PUBLIC OPINION.
—FRANK KELLOGG



Frank B. Kellogg.
LIBRARY OF CONGRESS

performed the duties of secretary of state and negotiated treaties.

In 1928 Kellogg achieved international acclaim for his collaboration with Aristide Briand in the formulation of the KELLOGG-BRIAND PACT, which denounced war as a solution to international disagreements. The pact was subsequently ratified by 63 nations. In 1929, the Nobel Peace Prize was bestowed upon Kellogg for his contribution to world peace.

During the latter part of his life, Kellogg acted as judge of the Permanent Court of International Justice. He died December 21, 1937, in St. Paul, Minnesota.

CROSS REFERENCE

Kellogg-Briand Pact.

v KELLY, SHARON PRATT DIXON

From 1991 to 1994, the difficult job of running Washington, D.C., belonged to Mayor SHARON PRATT DIXON KELLY, a successful utilities attorney who had had no previous experience in city government. Kelly was voted mayor in the wake of Marion Barry's fall from political grace. During her uphill campaign, Kelly portrayed herself as a squeaky-clean political outsider, even though she had strong connections to the national DEMOCRATIC PARTY. Kelly, a middle-class African American who was born and raised in the District of Columbia, promised to reduce crime, cut the city's bloated budget, and clean up corrupt government. Although she was turned out of office after just one term, Kelly earned herself a permanent place in history by becoming the first female mayor of the nation's capital.

DIVISIVENESS HAS NO PLACE IN OUR POLITICS ... SPITEFULNESS AND HATRED ONLY ERODE THAT WHICH IS TRULY MAGNIFICENT ABOUT OUR COUNTRY.
—SHARON PRATT DIXON KELLY

Kelly was born January 30, 1944, in Washington, D.C. She was the first child of Mildred Petticord Pratt, who died of cancer when Kelly was just four years old, and Carlisle E. Pratt, who was a lawyer and superior court judge. Family expectations were high for Kelly, whose father gave her a copy of *Black's Law Dictionary* as a birthday gift when she was very young. Kelly did not disappoint her father, graduating from Howard University with a bachelor's degree in political science in 1965 and a law degree in 1968. While in college, Kelly met her first husband, Arrington Dixon, who later became a member of the Washington, D.C., City Council. The couple married in 1967, had two daughters, and divorced in 1982. In 1991 Kelly married entrepreneur James Kelly III. Although she had won the mayoral race as Sharon Pratt Dixon, she changed her last name to Kelly shortly after her 1991 wedding.

Kelly began her legal career as an attorney in her father's law firm. She also taught courses at Antioch School of Law, before joining the Potomac Electric Power Company (PEPCO) as associate counsel in 1976. Kelly eventually became the first African American woman to be named vice president at PEPCO. As a decisive, hardworking executive, Kelly was involved in lobbying, policy making, and regulatory matters for the utility company. At the same time, she developed a strong interest in local Democratic politics. Kelly became the Democratic national committeewoman from the District of Columbia in 1977 and eventually was the first African American woman to serve as national party treasurer.

Kelly entered politics to try to halt the social and economic deterioration of Washington, D.C. In 1989 she announced her longshot candidacy for mayor. Soon afterward, Barry's career imploded with his arrest and subsequent conviction for crack cocaine possession and use. After Barry had withdrawn from the race, Kelly faced three city council members, each of whom had greater name recognition. Kelly was a political unknown whose middle-class background made

her suspect to residents in the poorest sections of Washington, D.C. Until then, she had been on the political sidelines, never in the spotlight. To set herself apart from her opponents, Kelly made a rather rash promise to cut Washington's MURDER rate, which was the highest in the nation. She also pledged to shrink the city's budget by eliminating 2,000 government jobs. On her lapel, Kelly wore a pin shaped like a shovel, to symbolize her campaign promise to "clean house with a shovel, not a broom."

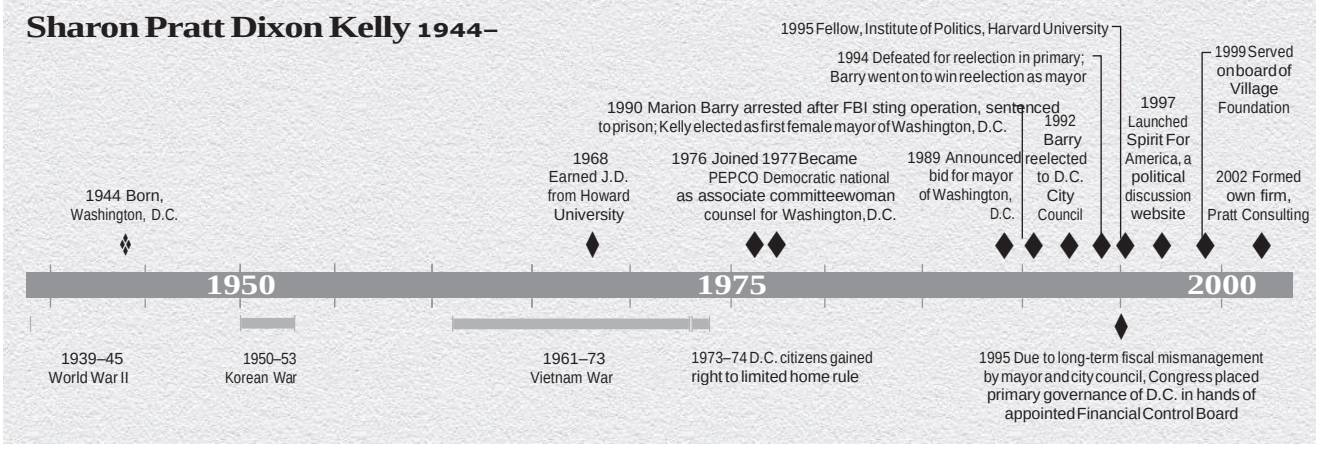
On September 11, 1990, Kelly achieved her first victory at the polls, winning the mayoral primary election by an impressive margin. In that year's general election, she handily defeated her Republican opponent, Maurice T. Turner, a former D.C. police chief. Kelly won the mayor's race with 86 percent of the vote, a new district record. Her administration's slogan became "Yes We Will," a vow to overhaul city government.

During the early days of her administration, Kelly enjoyed successes. She coaxed $100 million in emergency aid from the U.S. Congress, helped to convince the owners of the Washington Redskins football team to remain in town, and handled riots in the Mount Pleasant neighborhood with considerable aplomb. But problems arose, including political squabbling with city council members and serious budget cuts from Congress. Despite her campaign pledges, Kelly still faced a high homicide rate and an overextended city budget. Although her call for deficit reduction was popular, government workers who were affected by proposed layoffs were openly hostile to her plans.

Sharon Pratt.

a LARRY DOWNING/ SYGMA/CORBIS

As Kelly's ratings in public-opinion polls plummeted, the political fortunes of former mayor Barry rose. In 1992 Barry staged a remarkable political comeback when he was elected to the D.C. City Council, shortly after his release from federal prison. Despite his well-publicized drug problem, Barry remained popular with many voters, particularly those in poor and working-class neighborhoods. Barry was credited with developing the downtown area, attracting new businesses, and focusing



national attention on the capital's plight during his 12 years as mayor. He criticized Kelly, focusing on her inability to improve schools, crime rates, and public housing.

In the primary election on September 13, 1994, Kelly was handed a stunning defeat. Barry and D.C. City Council member John Ray finished in a virtual dead heat for first place in the Democratic mayoral primary. A massive voter registration drive brought new supporters into Barry's camp. As a result, many voters turned to candidate Ray as the only realistic alternative to Barry. Kelly received the unmistakable message that her brand of government did not work in the nation's capital. Voters returned Barry to the mayor's office in the November general election. Among those who were appointed to Barry's mayoral transition team was Kelly's ex-husband, businessman Arrington Dixon.

In 1998 Barry was replaced by Anthony ("Tony") Williams, who, like Kelly, pledged to reform District of Columbia politics. In 2002, Williams ran for re-election and was supported by both Sharon Pratt Kelly and Marion Barry.

As of 2010, Kelly was head of her own consulting firm, Pratt Consulting, which worked with corporations and governments on designing Homeland Security and Emergency Management plans.

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KELO V. CITY OF NEW LONDON

Governmental entities have the power to take private property for public use, with the law requiring the governmental entity to pay JUST COMPENSATION to the landowner. In 2005 the U.S. Supreme Court addressed a case in which a municipal government took private property for the purpose of economic development. In *Kelo v. City of New London* (545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439 [2005]), the Court determined that the City of New London, Connecticut, was within its constitutional rights to condemn private property for economic development, even though a private company would own much of the land once it was developed. The case sparked a national controversy that led most state legislatures to limit the power of EMINENT DOMAIN.

New London suffered an economic setback in 1996, when the Naval Undersea Warfare Center closed and about 1,000 of its employees transferred to Newport, Rhode Island. In January 1998 the state bond commission in Connecticut authorized the issuance of bonds that would be used for economic development of the New London's Fort Trumbull area. About one month later, Pfizer, Inc., a pharmaceutical giant, announced that it would open a global research facility in the city. In anticipation of the opening of this center, the city considered development plans created by the New London Development Corporation (NLDC), a private entity that serves as the city's development agency.

The Pfizer facility opened in June 2001. The NLDC development plan focused on an area of about 90 acres. Included within this land were 115 individual land parcels. The development plans would divide this property into seven new parcels, which would be used for a hotel and conference center, marinas along the Thames River, new upscale residences, office space, and parking. The NLDC, in the preface to the development plan, stated that the development would benefit the public, due to increased tax revenue, more jobs, and improved use of the city's waterfront.

The city council of New London approved the development plan in 1998. In 2000, state agencies in Connecticut and the city council of New London approved a Municipal Development Plan (MDP). In that plan, the city authorized the NLDC to acquire properties located within the development plan's area. Under authority granted to it by the city, the NLDC voted to use the power of eminent domain to acquire properties of those residents who were unwilling to sell their property. The NLDC initiated a series of condemnation actions against several residents in the Fort Trumbull area in November 2000.

Some of the homeowners objected to the condemnation. Most asserted that they wanted

to remain in their homes for personal reasons. Some of these residents had invested considerable work in their property. Other residents said that their families had lived in the homes for generations. Susette Kelo, who appeared as the named PLAINTIFF in the case, testified that she enjoyed the view from her home. All of the residents who objected to the condemnation said that they were not opposed to the economic development but that they did not believe that the taking of their property was necessary in order to develop the land.

Several of the residents in the Fort Trumbull area filed suit against the city, seeking a permanent injunction that would bar the city from condemning their homes. The Superior Court of Connecticut reviewed the case in a seven-day bench trial. The court recognized the "conflicting dreams" of the residents and the city. "The plaintiffs wish to live out the typical American dream of abiding and owning in peace homes and property that they have chosen," the court wrote. "Any threat to that dream is understandably forcefully and emotionally opposed as it should be in a free society." In addition, the court recognized that the city's desire in these plans was to improve the city's economic and social wellbeing (*Kelo v. City of New London*, No. 557299, 2002 WL 500238 [Conn. Super. Mar. 13, 2002]).

Section 11 of Article 1 of the Constitution of Connecticut provides: "The property of no person shall be taken for public use, without just compensation therefor." The plaintiffs argued that the city's exercise of eminent domain violated the Connecticut Constitution, state statutory provisions, and New London's city charter. Additionally, the plaintiffs maintained that the plan violated their EQUAL PROTECTION and due process rights. The trial court rejected each of these arguments as they pertained to a parcel, named Parcel 3, which would contain office space and parking. However, the court enjoined the city's taking of another parcel, named Parcel 4A, which would be used for parking space, because plans for that parcel were "too vague and uncertain to allow the court to conclude the takings here are necessary and would not be unreasonable."

The parties cross-appealed the trial court's decision to the Connecticut Supreme Court. In a 4-3 decision, the court rejected all of the plaintiffs' arguments. The court held that the city's plans were primarily intended to benefit the public and that this plan was permissible under the state's constitution and statutes. Moreover, the court found that the trial court had failed to give proper deference to the legislative decisions of the city. The court affirmed the denial of injunctive relief and reversed the trial court's decision to grant the injunction related to Parcel 4A (*Kelo v. City of New London*, 843 A.2d 500 [Conn. 2004]).

Susette Kelo, shown, challenged the law of eminent domain when her house and others in her neighborhood were seized for the purpose of economic development. The Supreme Court ruled against Kelo, 5–4, though Kelo's home was eventually relocated.

AP IMAGES

The plaintiffs filed a petition for writ of CERTIORARI with the U.S. Supreme Court on July 19, 2004. The Court granted the petition on September 28. Commentators suggested that the Court's decision "will determine whether private ownership has any meaning left or whether we really live in a command economy, like the old Soviet Union, where government can expropriate property whenever it is profitable to do so." Supreme Court precedent has given wide latitude to municipalities to

determine whether taking of property is "necessary." In a 1954 decision, *Berman v. Parker* (348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 2d 27 [1954]), the Court concluded that a city could consider aesthetic reasons in determining whether to condemn property.

Twenty-five amicus curiae briefs supported the plaintiffs' position in the case. Organizations that filed these briefs included such traditionally liberal entities as the National Association for the Advancement of Colored People and the AMERICAN ASSOCIATION OF RETIRED PERSONS, along with such traditionally conservative groups as the Cato Institute and the Pacific Legal Foundation. Many of these organizations generally expressed concern that property owned by certain groups, such as minorities or churches, could be targeted by cities for condemnation without any restraint on the government's power.

In an opinion written by Justice JOHN PAUL STEVENS, the U.S. Supreme Court affirmed the Connecticut Supreme Court's decision. According to Stevens, even though the city could not take the plaintiffs' land in order to confer a private benefit on a particular private party, the city could take the property pursuant to a carefully considered development plan. The Court noted that it has applied the term "public purpose" broadly, and even though much of the property in question would not be open to the general public, the term is sufficiently broad to include a development plan that would add jobs and revenue to the city. In reaching its decision, the Court noted that it would show deference to the city's decisions regarding the property.

Justice Sandra Day O'Connor, joined by Chief Justice WILLIAM REHNQUIST and Justices ANTONIN SCALIA and CLARENCE THOMAS attacked the majority's decision. According to O'Connor, the Court abandoned long-established principles that the government cannot take property from one private person and give it to another. "Under the banner of economic development," O'Connor wrote, "all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded—i.e., given to an owner who will use it in a way that the legislature deems more beneficial to the public—in the process."

The case sparked controversy on a national scale. The public generally decried the practice of taking private property to benefit other private entities. The vast majority of state legislatures considered legislation that would limit the effect of the *Kelo* decision. For instance, in 2005, the Texas Legislature passed a statute directly in response to *Kelo*. Under this statute, a governmental entity may not take property if the taking "confers a private benefit on a particular private party through the use of the property" or if the taking is for economic development purposes.

In 2008 the City of New London agreed to move Kelo's house to a new location. The land where her house once stood remained vacant as of 2009. Moreover, in November 2009 Pfizer announced that it would close the plant in New London, meaning that the city would lose the main focus of the redevelopment plan.

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v KELSEN, HANS

Hans Kelsen was a European legal philosopher and teacher who emigrated to the United States in 1940 after leaving Nazi Germany. Kelsen is most famous for his studies on law and especially for his idea known as the pure theory of the law.

Kelsen was born in Prague, Czechoslovakia, on October 11, 1881. He studied at several universities, including Berlin, Heidelberg, and Vienna. He received a doctor of laws degree from Vienna in 1906 and began teaching at the school in 1911. He taught PUBLIC LAW and jurisprudence at Vienna until 1930, when he moved to Germany to teach at the University of Cologne. There he taught INTERNATIONAL LAW and jurisprudence and served as dean for two years.

With the rise of the Nazi government, he left Germany and emigrated to Switzerland in 1933. He taught at the Graduate Institute of International Studies of the University of Geneva until 1940. He accepted a position as lecturer at the Harvard University Law School the same year, and relocated to the United States. Later in 1940

he accepted a teaching position at the University of California at Berkeley. He remained at Berkeley until his retirement in 1952.

Kelsen's pure theory of the law is fairly abstract. Its objective is knowledge of that which is essential to law; therefore, the theory does not deal with that which is changing and accidental, such as ideals of justice. Kelsen believed that law is a science that deals not with the actual events of the world (what is) but with norms (what ought to be). The legal relation contains the threat of a sanction from an authority in response to a certain act. The legal norm is a relation of condition and consequence: if a certain act is done, a certain consequence ought to follow.

In this theory a legal system is made of a hierarchy of norms. Each norm is derived from its superior norm. The ultimate norm from which every legal norm deduces its validity is the *Grundnorm,* the highest basic norm. The *Grundnorm* is not deduced from anything else but is assumed as an initial hypothesis. A norm is a valid legal norm only because it has been created according to a definite rule.

The theory is independent of morality. It does not matter which particular *Grundnorm* is adopted by a legal order. All that matters is that this basic norm has a minimum effectiveness: It must command a certain amount of obedience, because the effectiveness of the total legal order is necessary for the validity of its norms.

Kelsen received acclaim for authoring many publications, including *General Theory of Law and State* (1945), *The Law of the United Nations* (1950–51), *Principles of International Law* (1952), and *What Is Justice?* (1957). He died April 20, 1973, in Berkeley, California.

v KENNEDY, ANTHONY MCLEOD

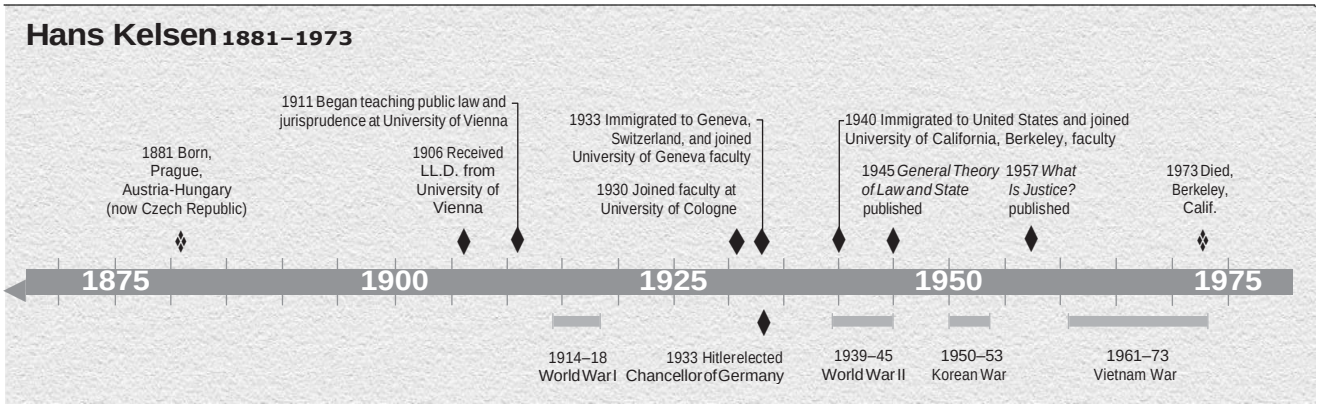
Anthony McLeod Kennedy was appointed as an associate justice of the U.S. Supreme Court in 1988. Kennedy was the third person nominated by President RONALD REAGAN to fill the vacancy created by the retirement of Justice Lewis F. Powell Jr. As a judicial conservative, Kennedy has generally voted with the conservative justices on the Court, yet he has split from them in significant rulings on ABORTION rights and gay rights.

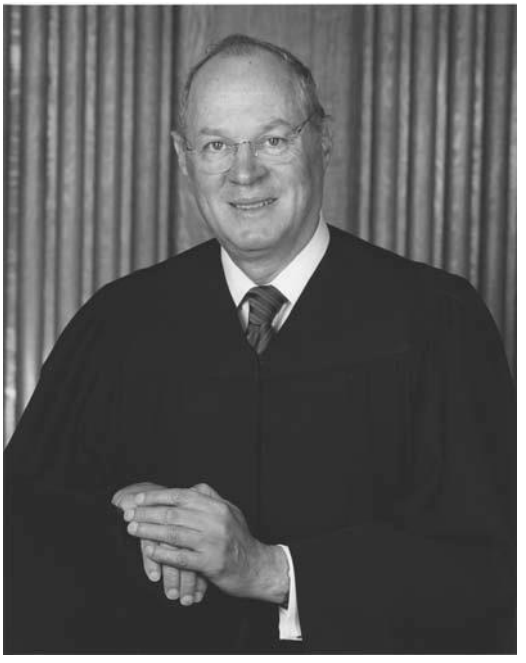
Kennedy was born in Sacramento, California, on July 28, 1936. He graduated from Stanford University in 1958 and from Harvard Law School in 1961. He practiced law in San Francisco and Sacramento and taught CONSTITUTIONAL LAW at the McGeorge School of Law of the University of the Pacific from 1965 to 1988.

His conservative philosophy and his REPUBLICAN PARTY affiliation led to Kennedy's first judicial appointment. In 1975, President GERALD R. FORD appointed him to the Ninth CIRCUIT COURT of Appeals. Kennedy served on the federal appeals court for thirteen years and wrote over four hundred opinions.

A well-respected jurist, Kennedy entered the national limelight after the Senate rejected President Reagan's first nominee for Powell's seat on the Court, Judge ROBERT H. BORK, and Reagan's second nominee, Judge DOUGLAS H. GINSBURG, withdrew following his admission that he had smoked marijuana. Kennedy's confirmation hearings were filled with questions that sought to compare his philosophy to Bork's. Bork had embraced the doctrine of original intent—the idea that a judge should apply the Constitution only in the exact manner intended by the Constitution's Framers—as the only

THE OBLIGATION TO FOLLOW PRECEDENT BEGINS WITH NECESSITY, AND A CONTRARY NECESSITY MARKS ITS OUTER LIMIT.
—ANTHONY M. KENNEDY





Anthony M. Kennedy.

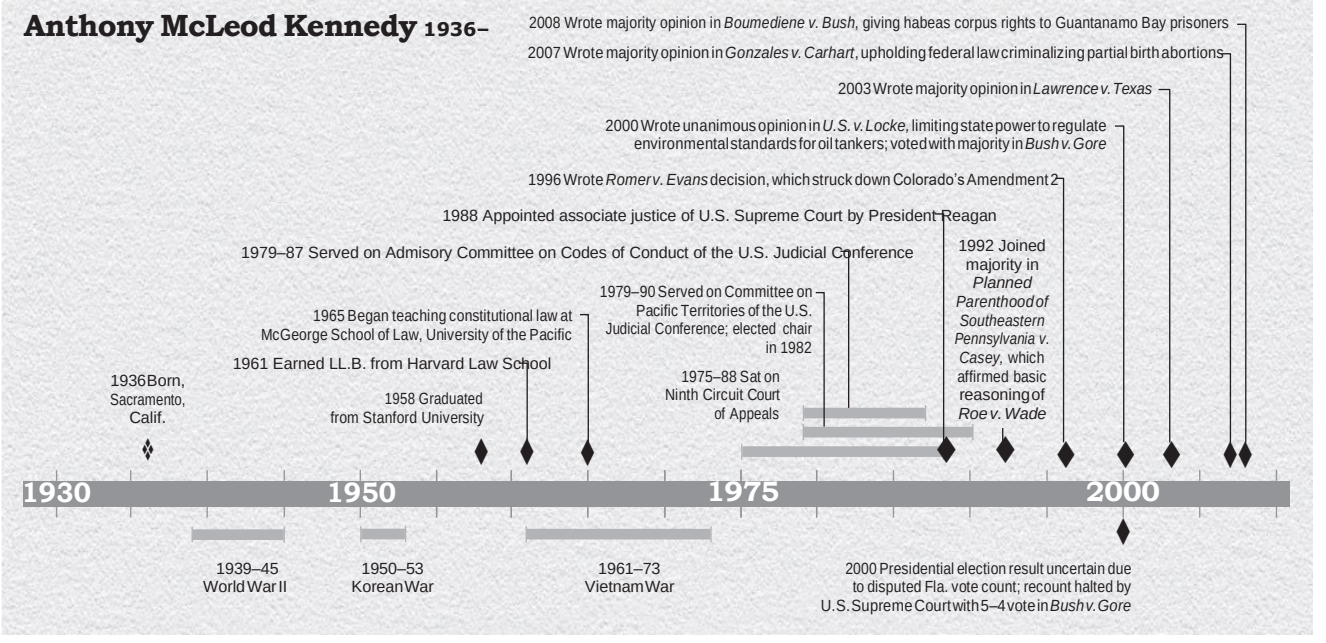
ROBIN REID, COLLECTION OF THE SUPREME COURT OF THE UNITED STATES

legitimate means of interpretation. Kennedy testified that ORIGINAL INTENT was only a starting point in interpreting the Constitution. In his Senate testimony, Kennedy stated his commitment to the principle of STARE DECISIS. This principle refers to the respect for legal precedent created by prior cases and the need to maintain precedent even if the current judges do not agree with the original ruling.

Kennedy was confirmed in February 1988, with many liberal members of Congress feeling that he was too conservative, and some conservatives believing he was moderate, a compromise candidate who could survive the confirmation process.

Since taking office as associate justice, Kennedy has proved to be both conservative and moderate, depending on the case. He has usually sided with the conservative members of the Court, but he has gained attention by departing from them in two important cases. In *Planned Parenthood of Southeastern Pennsylvania v. Casey,* 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992), watchers had expected the Court to overrule explicitly ROE V. WADE, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147, the 1973 decision that defined the right to choose abortion as a fundamental constitutional right. Kennedy joined with Justices Sandra Day O'Connor and DAVID H. SOUTER in an opinion that defended the reasoning of *Roe* and the line of cases that followed it.

In 1996 Kennedy wrote a landmark and controversial decision concerning gay rights. In ROMER V. EVANS, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855, Kennedy declared unconstitutional an amendment to the Colorado state constitution (West's C.R.S.A. Const. Art. 2, § 30b) that prohibited state and local governments from enacting any law, regulation, or



policy that would, in effect, protect the CIVIL RIGHTS of gay men, lesbians, and bisexuals. Kennedy ruled that the amendment violated the EQUAL PROTECTION Clause of the FOURTEENTH AMENDMENT, noting that the amendment classified gay men and lesbians "not to further a proper legislative end but to make them unequal to everyone else," and adding, "This Colorado cannot do."

Although considered a swing vote on closely divided court, Kennedy has authored opinions that enhance states' police powers. In *Kansas v. Hendricks*, 521 U.S. 346, 117 S. Ct. 2072, 138 L. Ed.2d 501 (1997), Kennedy upheld a state law that permitted the indefinite civil commitment of "sexual psychopath" prisoners who had completed their prison terms. In *McKune v. Lile*, 536 U.S. 24, 122 S. Ct. 2017, 153 L. Ed. 2d 47 (2002), Kennedy concluded that that states can limit the privileges of prisoners who refuse to divulge their past crimes as part of a therapy program. In addition, he has supported the constitutionality of sex-offender registry lists, compulsory drug testing of public-school students who wish to participate in extracurricular activities, and "three strikes" mandatory-sentencing schemes. In BUSH V. GORE, 531 U.S. 98, 121 S. Ct. 525, 148 L.Ed.2d 388 (2000), Kennedy voted with the majority to bar Florida from conducting a recount of presidential ballots, thereby ensuring the election of GEORGE W. BUSH.

In LAWRENCE V. TEXAS, the Supreme Court, in a 6–3 decision in 2003, declared a Texas law that prohibited sexual acts between same sex couples unconstitutional. Justice ANTHONY KENNEDY, writing for the majority, held that the right to privacy protects a right for adults to engage in private, consensual homosexual activity. Justice Kennedy's opinion expressly overruled the Court's decision in Bowers v. Hardwick (1986), which had come to an opposite conclusion.

In March 2005 Kennedy wrote the majority opinion in a 5–4 U.S. Supreme Court ruling that said executing killers who were under 18 when they committed their crimes was unconstitutional.

Some U.S. Supreme Court analysts suggested that Kennedy might be appointed chief justice when WILLIAM REHNQUIST chose to retire. But when Rehnquist died, Kennedy was not given the chief justice position. Whereas some argue that Kennedy is not liberal enough for liberals, or conservative enough for conservatives, others point out that the centrist views that often make him the swing vote in cases dividing the Court might have made him attractive enough to survive the Senate nomination procedure without a major confirmation fight.

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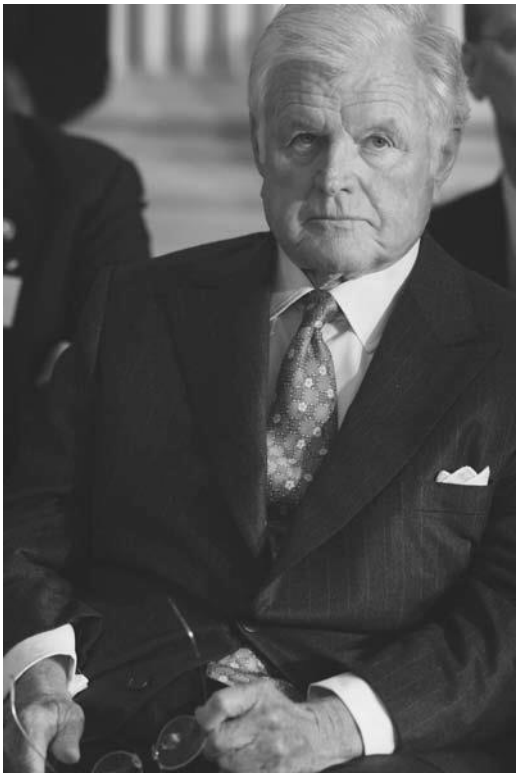
v KENNEDY, EDWARD MOORE

TED KENNEDY served as a U.S. senator from Massachusetts for 47 years, from 1962 to 2009. The brother of President JOHN F. KENNEDY and Senator ROBERT F. KENNEDY, who were both assassinated, he championed many liberal social programs, including NATIONAL HEALTH CARE, and was a major figure in the DEMOCRATIC PARTY. His presidential aspirations were damaged because of personal scandal.

Edward Moore "Ted" Kennedy, the youngest of nine children of Joseph P. Kennedy and Rose Fitzgerald Kennedy, was born February 22, 1932, in Brookline, Massachusetts. He started at Harvard University in 1950, then left in 1951 to serve in the U.S. Army. He returned to college in 1953 and graduated in 1956. He next attended the University of Virginia Law School, where he graduated in 1959. He married Virginia Joan Bennett in 1958. The couple had three children, Kara A., Edward M., Jr., and Patrick J. They were divorced in 1983.

In 1960 Kennedy became an assistant district attorney in Suffolk County, Massachusetts. He soon turned his eye toward politics. After his brother John was elected president in 1960 and had to resign from the U.S. Senate, Kennedy filed in the 1962 election to fill out



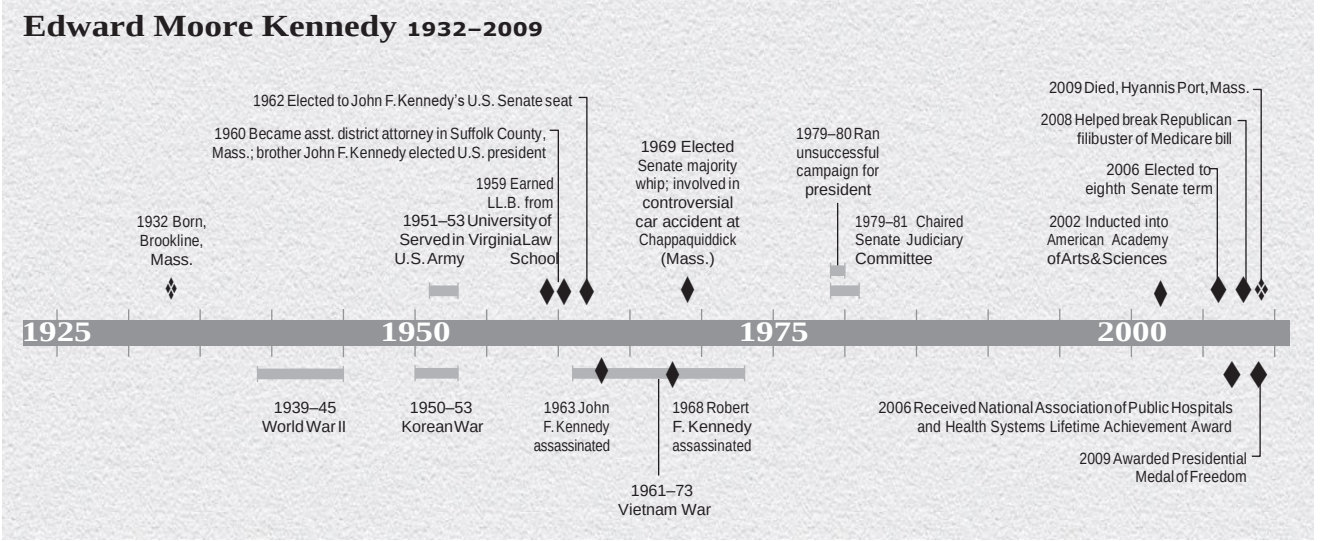
Ted Kennedy.
AP IMAGES

John's term. His announcement led opponents to criticize him for trading on the Kennedy name. He was only 30 years old, the minimum age for a U.S. senator set by the U.S. Constitution, and had little experience in politics or the workplace. Nevertheless, Kennedy easily won the election. He won a full six-year term in 1964 and was re-elected eight times until his death in 2009.

Despite his youth, Kennedy soon emerged as a forceful advocate of social-welfare legislation and a respected member of the Senate. He was elected Senate majority whip in 1969, which was highly unusual for a person with little seniority. Kennedy appeared ready to make a presidential bid in 1972. But any hopes in that direction were dashed in the summer of 1969, when his personal conduct became a national scandal.

On July 18, 1969, Kennedy attended a party with friends and staff members on Chappaquiddick Island, Massachusetts. That evening, Kennedy drove his car off a narrow bridge on the island. Mary Jo Kopechne, a passenger in the car and former member of his brother Robert's staff, drowned. Kennedy's actions following the accident were disturbing. He did not immediately report what had happened, and he remained in seclusion for days. He pleaded guilty to the MISDEMEANOR charge of leaving the scene of an accident. This PLEA, coupled with the revelation that he, a married man, had been in the company of a young, unmarried woman, devastated Kennedy's image and political standing. He lost his majority whip position in 1971 and refused to become involved in the 1972 presidential race.

During the 1970s Kennedy concentrated his energies on his senatorial duties. He became the leading advocate of a national health care system that would provide coverage to every citizen without regard to income. He also



argued for tax reform, arms control, and stronger antitrust laws. From 1979 to 1981, he chaired the SENATE JUDICIARY COMMITTEE. He initially supported the administration of Democratic president JIMMY CARTER, but soon criticized Carter's economic policies and leadership style.

His dissatisfaction led him to seek the presidential nomination in 1980. Running against an incumbent of his own party, Kennedy drew the support of liberals and won primaries in ten states. Carter nevertheless won the nomination. However, already weakened by Kennedy's criticisms, Carter lost the general election to RONALD REAGAN.

During the administrations of Reagan and his successor, GEORGE H.W. BUSH, Kennedy became the leading liberal critic of Republican policies and politics.

Kennedy's personal life continued to attract attention in the 1990s. In March 1991, Kennedy's nephew, William Kennedy Smith, was charged with RAPE in Palm Beach, Florida. The alleged ASSAULT took place at the Kennedy family compound. Palm Beach police asserted that Kennedy had obstructed justice by misleading police early in their investigation. When police arrived to investigate, they were told that Kennedy and Smith had already left the area. Later investigation of travel records indicated that Kennedy probably was still in the mansion at the time. Although Smith was acquitted of the charge in December 1991, the nationally televised trial again tarnished Kennedy's reputation. In July 1992 Kennedy married Victoria Reggie, a Washington, D.C., lawyer.

Despite differing public opinions, Kennedy remained a powerful member of the U.S. Senate. In 1996 he sponsored legislation with Republican Senator Nancy Kassebaum of Kansas that made HEALTH INSURANCE portable, so that families would not lose their health insurance coverage if they lost or changed jobs.

In 1999 Kennedy and his family suffered a further tragic loss when a small airplane piloted by his nephew John Kennedy, Jr. went down in the Atlantic Ocean near Martha's Vineyard, Massachusetts, killing John Kennedy, his wife, and his sister-in-law. Once again, Ted Kennedy found himself playing the role of family patriarch as he oversaw funeral arrangements and consoled family members. In the new millennium, Kennedy continued his role as senior senator, serving as the senior Democrat on the IMMIGRATION Subcommittee of the Judiciary Committee and as a member of the Senate Arms Control Observer Group, a part of the Armed Services Committee.

Kennedy's persistence, collegiality, and long service won him friends on both sides of the aisle. While on the Senate, he advocated for numerous causes, including raising the MINIMUM WAGE, strengthening CIVIL RIGHTS laws and laws aimed at protecting senior citizens and persons with disabilities, and tightening environmental and worker-safety laws.

In 2007 Kennedy began suffering from health problems and underwent surgery to remove a blocked artery. In May 2008 he suffered a seizure and was diagnosed with a brain tumor, undergoing surgery that June. Kennedy returned to the Senate in July and helped break a Republican filibuster of a MEDICARE bill. The determined senator left his hospital bed to be a featured speaker on the opening night of the Democratic National Convention that August. In 2009, at an Inauguration Day luncheon for President BARACK OBAMA, whom he had endorsed and supported, Kennedy suffered another seizure, and was later stabalized.

AMERICA WAS AN IDEA SHAPED IN THE TURBULENCE OF REVOLUTION, THEN GIVEN FORMAL STRUCTURE IN A CONSTITUTION.
—TED KENNEDY

2009 continued to be an important year, as Kennedy was awarded by President Barack Obama the Presidential Medal of Freedom, the highest civilian honor in the United States. That same month, his sister, Eunice Kennedy Shriver, known worldwide for her efforts with the mentally disabled, and for founding the Special Olympics, died at the age of 88. Kennedy also published a memoir, *True Compass*, in 2009.

Before his death on August 25, 2009, only a few weeks after his sister's death, the Senator, who had been re-elected to eight full terms, continued to be an advocate for health care, education, civil rights, immigration reform, raising the minimum wage, defending the rights of workers and their families, assisting individuals with disabilities, protecting the environment, and safeguarding and strengthening SOCIAL SECURITY and Medicare. He was also a strong opponent of the war in Iraq. He was chair of the Senate Health, Education, Labor and Pensions Committee, and also served on the Senate Armed Services Committee, where he was Chairman of the Seapower Subcommittee. At the time of his death, the debates about health care reform in the U.S. continued to heat

up, which was an issue near and dear to his heart, and one that he always strived to solve. His death signified, according to the media as well as family and friends, the end of an era for the Kennedy clan.

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Health Care Law.

v KENNEDY, JOHN FITZGERALD

John Fitzgerald Kennedy was the 35th PRESIDENT OF THE UNITED STATES, serving from 1961 until his ASSASSINATION in 1963. Although his administration had few legislative accomplishments, Kennedy energized the United States by projecting idealism, youth, and vigor.

Kennedy was born May 29, 1917, in Brookline, Massachusetts. His father, Joseph P. Kennedy, was a self-made millionaire and the son of a Boston politician. His mother, Rose Fitzgerald Kennedy, was the daughter of John F. ("Honey Fitz") Fitzgerald, who served as a Representative and a mayor of Boston.

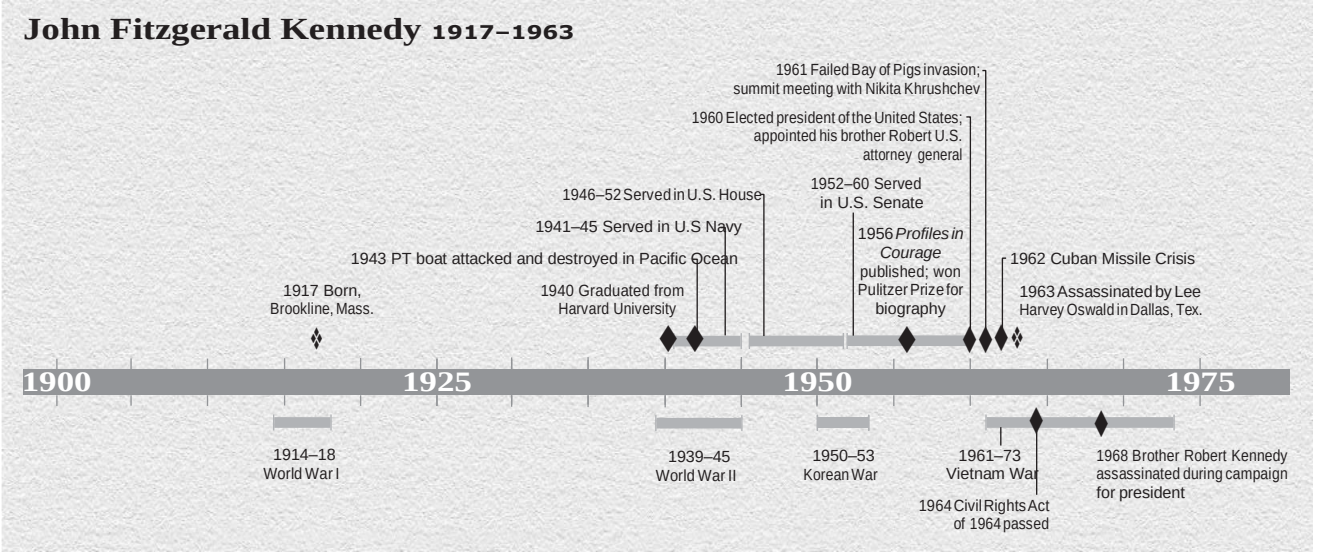
Kennedy, one of nine children, graduated from Harvard University in 1940. His senior thesis, "Why England Slept," which addressed the reasons why Great Britain had been unprepared for WORLD WAR II, was published in 1940 to great acclaim. His father thought that Kennedy would become a writer or teacher, and that Kennedy's older brother, Joseph P. Kennedy, Jr., would go into politics. World War II changed those plans.

Kennedy joined the Navy in 1941 and commanded a PT boat in the Pacific Ocean. In 1943, the boat was attacked and destroyed, and Kennedy emerged a as hero, owing to his valiant efforts to save his crew. His older brother Joseph was killed in action in 1944. Kennedy's father then transferred his political goals to Kennedy.

In 1946 Kennedy was elected to the U.S. House of Representatives from the solidly Democratic Eleventh District of Massachusetts. He was re-elected in 1948 and 1950.

In 1952 he was elected to the Senate, defeating the incumbent, Republican HENRY CABOT LODGE Jr. Kennedy kept a low profile at first, working on legislation that benefited Massachusetts. Back problems and other physical maladies bedeviled Kennedy during this period. He underwent two operations on his back, to alleviate chronic pain. During his convalescence, he wrote *Profiles in Courage* (1956), a series of essays on courageous stands taken by U.S. senators throughout U.S. history. It won the 1957 Pulitzer Prize for biography.

In 1956 Kennedy sought the Democratic vice presidential nomination. He made the



presidential nominating speech for ADLAI STEVENSON, of Illinois, who was nominated for a second time to run against DWIGHT D. EISENHOWER. Despite a vigorous effort, Kennedy lost the vice presidential nomination to Senator Estes Kefauver, of Tennessee.

In 1957 Kennedy was appointed to the Senate Foreign Relations Committee, where he became a critic of the Eisenhower administration's foreign policy and a champion for increased aid to underdeveloped countries. He also served on the committee that investigated corruption and RACKETEERING in labor unions and the head of the Teamsters Union, JAMES R. HOFFA.

In 1960 Kennedy won the Democratic presidential nomination. He selected Senator LYNDON B. JOHNSON, of Texas, to be his running mate. After a vigorous campaign that included television debates with Republican RICHARD M. NIXON, Kennedy won the election by fewer than 120,000 popular votes. He was the youngest American ever to be elected president, as well as the first Roman Catholic to hold the office. His impressive inaugural speech contained the popular phrase "Ask not what your country can do for you—ask what you can do for your country."

Once in office, Kennedy drafted a series of ambitious measures that were collectively entitled the New Frontier. These policies included expanding the space program, instituting CIVIL RIGHTS legislation, aiding education, improving the tax system, and providing medical care for older citizens through the SOCIAL SECURITY program. Most of the New Frontier programs failed to progress through a Congress that was dominated by southern Democratic leadership, but many were enacted by President Johnson following Kennedy's assassination.

The Kennedy administration was enmeshed in a series of foreign crises almost immediately. In April 1961 Kennedy was severely criticized for approving an ill-fated invasion of the Bay of Pigs, in Cuba. This clandestine operation, conceived during the Eisenhower administration, was conducted by anti-Communist Cuban exiles who had been trained in the United States, and it was directed by the CENTRAL INTELLIGENCE AGENCY. The invasion achieved public notoriety when it failed and created international tension.

John F. Kennedy.
LIBRARY OF CONGRESS

In June 1961 Kennedy and Premier Nikita Khrushchev, of the Soviet Union, met in Vienna to discuss ways of improving Soviet-U.S. relations. Instead of proceeding with those discussions, Khrushchev announced an increased alliance with East Germany. Later, the Berlin Wall was constructed to prohibit Western influence and to prevent persons from fleeing East Germany. In response, the United States added to its military forces in Germany.

The most serious crisis occurred in October 1962, when the U.S. learned that Soviet missiles were about to be placed in Cuba. Kennedy issued a forceful statement demanding the dismantling of the missile sites and ordered a blockade to prevent the delivery of the missiles to Cuba. The world was poised for nuclear war until Khrushchev backed down and agreed to Kennedy's demands. Kennedy's handling of the crisis led to national acclaim.

U.S. involvement in Southeast Asia began to increase during the Kennedy administration. Kennedy agreed to send U.S. advisers to help the South Vietnamese government fight Communist rebels. In 1963 the United States became involved in overthrowing the corrupt and unscrupulous South Vietnamese government of President Ngo Dinh Diem.

On the domestic front, Kennedy interacted with a newly invigorated CIVIL RIGHTS MOVEMENT

that was seeking to integrate the South. In 1961 federal marshals were sent to Montgomery, Alabama, to help restore order after race riots had erupted. In 1962 Kennedy sent 3,000 federal troops into Oxford, Mississippi, to restore order after whites rioted against the University of Mississippi's admission of JAMES MEREDITH, its first African American student. In 1963 Kennedy was forced to federalize the Alabama NATIONAL GUARD in order to integrate the University of Alabama. Later that year, he federalized the Guard again, in order to integrate the public schools in three Alabama cities.

Faced with these problems, Kennedy proposed legislation requiring that hotels, motels, and restaurants admit customers regardless of race. He also asked that the U.S. attorney general be given authority to file lawsuits demanding the desegregation of public schools. Most of these proposals were passed in the Civil Rights Act of 1964 (42 U.S.C.A. § 2000a et seq.).

THE RIGHTS OF EVERY MAN ARE DIMINISHED WHEN THE RIGHTS OF ONE MAN ARE THREATENED.
—JOHN F. KENNEDY

Kennedy's achievements during his brief term as chief executive included an agreement with the Soviet Union to restrict nuclear testing to underground facilities; the creation of the Alliance for Progress, to establish economic programs to aid Latin America; and the creation of the Peace Corps program, which provides U.S. volunteers to work in underdeveloped countries.

On November 22, 1963, Kennedy's term was ended by an assassin's bullets in Dallas, and Johnson was sworn in as president. Lee Harvey Oswald was charged with the MURDER. Oswald was killed two days later by Dallas nightclub owner JACK RUBY, while being moved from the city jail to the county jail. Johnson appointed a commission headed by Chief Justice EARL WARREN to investigate the Kennedy assassination. In its report, issued in September 1964, the commission concluded that Oswald had acted alone in murdering Kennedy.

Kennedy's assassination has remained one of the nation's most heated controversies. Many people were initially doubtful of the report's conclusions, and the skepticism has grown over time. Thousands of articles and books have been written that challenge the commisssion's findings and allege that agencies of the federal government withheld information from the commission and that the commission itself concealed evidence that contradicted its conclusions. In 1978 and 1979, the House Select Committee on Assassinations re-examined the evidence and concluded that Kennedy "was probably assassinated as a result of a conspiracy." Nevertheless, critics charged that vital information remained withheld from the public. In an effort to restore government credibility, Congress enacted the President JOHN F. KENNEDY Assassination Records Collection Act of 1992, 44 U.S.C.A. § 2107, which established the Assassination Records Review Board, an independent federal agency whose mission was to identify and release as many records relating to the assassination as possible. The board completed its work in 1998, releasing thousands of documents relating to the events on, and leading to, November 22, 1963. However, no conclusive evidence has surfaced to indicate the true assassin or any other individuals who participated in the assassination.

Kennedy married Jacqueline Bouvier in 1953. They had two surviving children, Caroline and John F. Kennedy Jr. Following Kennedy's death, the activities of Jacqueline and the two children remained part of the American consciousness. In 1968 Jacqueline married wealthy Greek businessman Aristotle Onassis, who died in 1975. She worked as an editor with Doubleday until her death in 1994. John F. Kennedy Jr. emerged as a popular media figure, and in 1995 he founded the now-defunct political magazine *George.* However, like his father, the junior Kennedy died an early, tragic death when he was killed in a plane crash along with his wife and sister-in-law in 1999.

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Cuban Missile Crisis; "Inaugural Address" (Appendix, Primary Document); Limited Test Ban Treaty; Warren Commission.

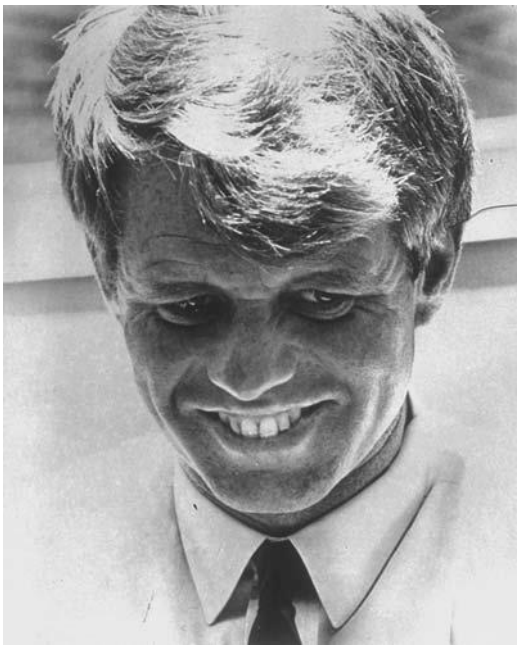
v KENNEDY, ROBERT FRANCIS

For more than 25 years in public service, ROBERT FRANCIS KENNEDY was at the center of the most important political and legal developments of his time. The younger brother, by five years, of President JOHN F. KENNEDY, in

whose cabinet he served, Bobby Kennedy held a number of roles in government: assistant counsel (1953–55) and chief counsel (1955–57) to the Senate Permanent Subcommittee on Investigations, chief counsel of the Senate Rackets Committee (1957–59), U.S. attorney general (1960–63), and finally U.S. senator from New York (1965–68). His major endeavors included probing union corruption in the 1950s and implementing White House policy on the CIVIL RIGHTS MOVEMENT in the early 1960s. He was assassinated in 1968, like his brother before him, while campaigning for the presidency.

Born into one of the United States' most powerful political dynasties, on November 20, 1925, in Brookline, Massachusetts, Kennedy was the third son of Joseph P. Kennedy and Rose Fitzgerald Kennedy. Great things were expected of the Kennedy sons, and the means were provided: $1-million trust funds, entrance to the Ivy League, and later, leverage to see that they held government positions. Kennedy's father, a business magnate and former U.S. ambassador to Great Britain, doted on the shy, bookish, and devoutly Catholic young man. His father thought Kennedy was most like himself: tough.

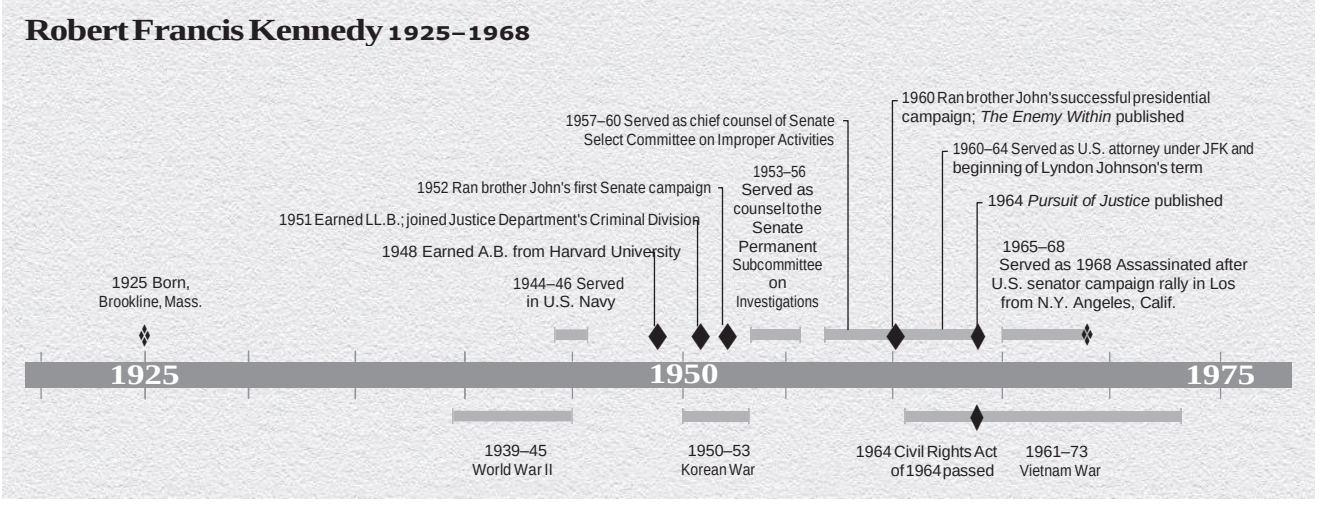
Kennedy was educated at Harvard College, interrupting his studies to serve in WORLD WAR II as a Navy lieutenant, following the death of his eldest brother, Joseph Patrick Kennedy, Jr., in the war. He served aboard the destroyer *Joseph P. Kennedy* until being discharged in 1946, then returned to Harvard, where he played football and earned his bachelor of arts degree in 1948. He next traveled briefly to



Robert Kennedy.
LIBRARY OF CONGRESS

Palestine as a war correspondent. MARRIAGE to Ethel Skakel followed in 1950, and a law degree from the University of Virginia in 1951. Kennedy and his wife had eleven children over the next eighteen years.

Kennedy's rapid ascent in national politics began immediately upon his admission to the Massachusetts bar in 1951. He first joined the Criminal Division of the U.S. JUSTICE DEPARTMENT as a prosecutor. The next year he managed his brother John's senatorial campaign, and in early 1953 he was appointed an assistant counsel to the Senate Permanent Subcommittee on Investigations, which became the bully pulpit for the



anti-Communist witch-hunts of its chairman, Senator JOSEPH R. MCCARTHY. Kennedy worked under McCarthy's foremost ally, Chief Counsel ROY COHN, and investigated international shipping to Communist China, before resigning over disgust with McCarthy in mid-1953. Historians view his role in the RED SCARE created by the proceedings to have been very limited, although some have argued that Kennedy was initially blind to Senator McCarthy's agenda. Kennedy rejoined the subcommittee in 1954, and became its chief counsel and staff director in 1955.

Under the new leadership of Senator JOHN MCCLELLAN, the subcommittee turned its attention to labor RACKETEERING. Kennedy focused on corruption in the International Brotherhood of Teamsters. Heading a staff of 65 investigators, he squared off against the union's presidents, David Beck and JAMES R. HOFFA, in dramatic public hearings at which he often was accompanied by his brother John. Kennedy and the subcommittee believed the union had connections to ORGANIZED CRIME; the union viewed Kennedy as a show-off who was persecuting it for his own political benefit. The union leaders frequently took the FIFTH AMENDMENT, refusing to answer questions under Kennedy's relentless grilling. Beck resigned and was later convicted; Kennedy became a national figure. The hearings began a long-running feud between Kennedy and Hoffa that would continue into the 1960s. Kennedy later devoted considerable resources of the Justice Department to prosecuting Hoffa, ultimately convicted in 1964 for jury tampering, FRAUD, and conspiracy in the handling of a Teamster benefit fund.

In 1960 Kennedy managed his brother John's presidential campaign. His reward was the position of attorney general, an appointment that brought widespread criticism of the president-elect for nepotism. But Kennedy's brother stood behind his decision, and thus began a relationship unique in presidential history: Throughout foreign policy crises in Cuba and Vietnam, domestic unrest over CIVIL RIGHTS, and especially the day-to-day functioning of the White House, Kennedy served as his brother's closest adviser. The two also shared a common problem in the person of Director J. Edgar Hoover, of the FEDERAL BUREAU OF INVESTIGATION (FBI), who secretly kept tabs on them while intensifying the FBI's domestic spying during the Kennedy administration.

SOME MEN SEE THINGS THAT ARE, AND ASK 'WHY?' I SEE THINGS THAT NEVER WERE, AND ASK 'WHY NOT?'
—ROBERT F. KENNEDY

The greatest crisis facing Attorney General Kennedy was the civil rights movement. The slow pace of change had frustrated civil rights leaders and mounting violence—from beatings to murder—brought pleas to the White House for intercession to protect demonstrators. During the Freedom Rides of 1961, for example, when busloads of black activists sought to integrate bus stations in the South, the movement's leaders appealed for help. Kennedy dispatched Justice Department representatives to Alabama; asked for assurances of protection from Governor John Patterson, of that state; and brought suit to win a court order on behalf of the riders. The administration was reluctant to do more because of concerns about limitations on federal power. Then in May 1961, after more terrible assaults on the activists in Montgomery, Alabama, the attorney general dispatched 500 federal marshals to Alabama. Yet the protection rendered did not stop local authorities from arresting, jailing, and beating activists.

The reluctance of the White House to intercede more forcefully had a political rationale as well: the new Kennedy administration had won election by a small margin that included southern support. As critics have noted, concerns about federal authority did not stop the attorney general from later authorizing Director Hoover to place wiretaps on the Reverend MARTIN LUTHER KING, JR., whom the pro-civil rights White House treated as an ally. Hoover's concerns about King's alleged Communist ties affected the Kennedys. As Kennedy later told an interviewer, "We never wanted to get very close to him just because of these contacts and connections that he had, which we felt were damaging to the civil rights movement." Nor did Kennedy balk at approving the appointment of William Harold Cox, an outspoken racist, as a district judge in Mississippi, for reasons of political expediency, although he later regretted having done so. In time, Kennedy and the president took bolder steps—in 1962, sending five thousand federal marshals to quell rioting in Mississippi, after JAMES H. MEREDITH became the first black man to enter the state's university, and later, securing King's release from jail in Birmingham, Alabama.

The ASSASSINATION of his brother John in 1963 changed the course of Kennedy's life. Besides grieving the loss of his brother, he found he worked uncomfortably under President LYNDON B. JOHNSON, and he soon left the Justice Department. In 1964 he won election in

New York to the U.S. Senate, where he served as a liberal voice until announcing his own bid for the presidency in 1968.

Emphasizing a commitment to the concerns of young people, black citizens, and the nation's poor, the Kennedy campaign inspired radicals, the working class, and the dispossessed. Kennedy's opposition to the war in Vietnam was passionate. On a television broadcast, he said:

> Do we have a right here in the United States to say that we're going to kill tens of thousands, make millions of people, as we have . . . refugees, kill women and children? . . . I very seriously question that right We love our country for what it can be and for the justice it stands for.

Kennedy's candidacy sharply divided the DEMOCRATIC PARTY between him and his opponent for the nomination, EUGENE MCCARTHY. Kennedy had won primaries in Indiana, Nebraska, and finally California, when he was shot at a campaign function on June 4, 1968, by Sirhan Sirhan, a Palestinian immigrant who said his motive was the candidate's support for Israel. The second MURDER of a Kennedy, following hard on the April 1968 assassination of King, was an immeasurable shock to the nation. It seemed to many to sound the death knell of an era.

Kennedy's contribution to U.S. law is complex. In the 1950s he helped expose corruption in the nation's unions, but critics have subsequently treated his very personal pursuit of Hoffa as an exercise not only in justice but in vendetta. When he headed the Justice Department in the early 1960s, his advocacy of civil rights had practical limitations imposed by political necessities and legitimate concerns about the balance of state and federal authority; groundbreaking civil rights legislation would, of course, follow in the years after his tenure. It was as a candidate for president that he may have been his most memorable, an ardent and inspirational voice. Through his opposition to the VIETNAM WAR and his support for the disadvantaged, he offered the promise of a new idealism in politics.

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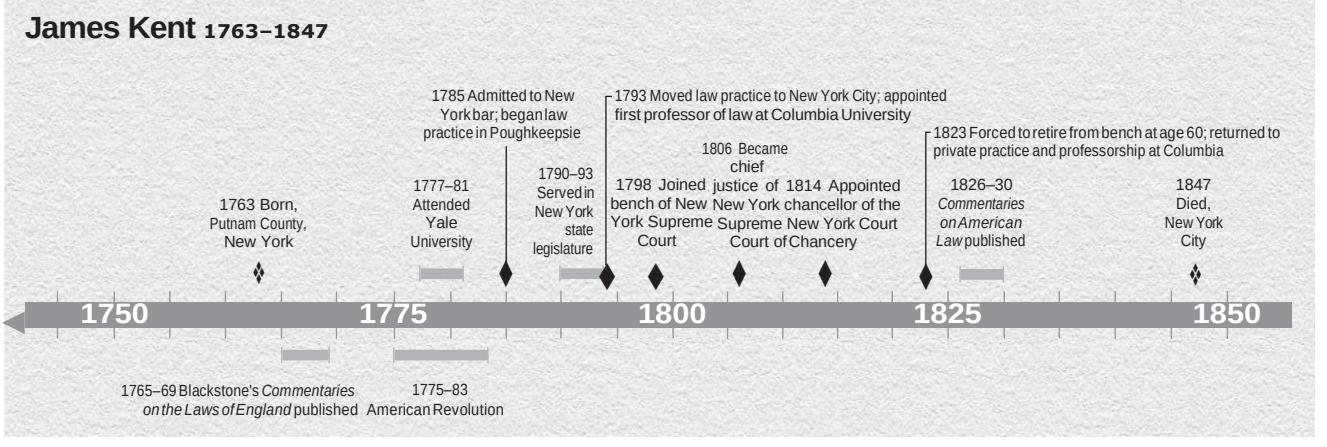
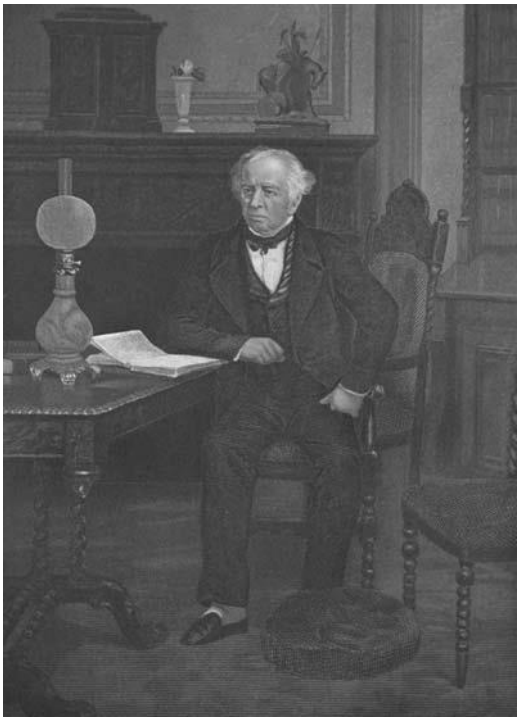
v KENT, JAMES

James Kent was a U.S. attorney, judge, and scholar who played a central role in adapting the common law of England into the common law of the United States. As a justice and later chief justice of the New York Supreme Court and a chancellor of the New York Court of Chancery (then the highest judicial officer in New York), Kent wrote many decisions that became foundations of nineteenth-century law. Kent's great legal treatise *Commentaries on American Law* (1826–30) offered the first comprehensive analysis of U.S. law.

Kent was born July 31, 1763, in Putnam County, New York. In 1777 he entered Yale University. The Revolutionary War periodically

THE DIGNITY OR INDEPENDENCE OF OUR COURTS IS NO MORE AFFECTED BY ADOPTING [ENGLISH JUDICIAL PRECEDENTS], THAN IN ADOPTING THE ENGLISH LANGUAGE.
—JAMES KENT





James Kent.
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disrupted his studies. During one of his forced suspensions, Kent read Sir William Blackstone's *Commentaries on the Laws of England* (1765–69), which led him to decide on a legal career. Following college he secured a clerkship with the attorney general of New York, and he was admitted to the New York bar in 1785.

Kent began his law practice in Poughkeepsie, New York. In 1790 he was elected to the New York state legislature, where he served three terms. A steadfast Federalist and supporter of the U.S. Constitution, Kent was committed to a strong national government. After losing a congressional race in 1793, he moved to New York City, where he practiced law and served as a professor of law at Columbia University.

Kent became a member of the New York Supreme Court in 1798, and served as chief justice from 1806 to 1814. He is credited with transforming the court into a professional, respected bench. He introduced the practice of issuing written as well as oral opinions, and was instrumental in appointing an official reporter to collect the written opinions into official LAW REPORTS. Kent believed that such reports were necessary so that past precedents could be read and cited more easily.

During his time on the court, Kent addressed the then burning issue of whether English precedents could claim the authority of law in the United States. Some members of the New York bar felt that the American Revolution would be unfinished until the United States had a body of law of its own, untainted by the laws of its former imperial master.

Kent disagreed. He argued that the predictability of justice was an indispensable requirement for achieving the commercial progress and stable social order sought by the Federalists. He further suggested that citation and the following of precedent were the best means to judicial predictability. Like many Federalists he admired the stability of the English common law and he maintained that it was the best system ever devised to ensure justice and order. Although he did not follow precedent blindly, Kent believed that previous decisions should not be expressly overturned except when absolutely necessary.

Kent was appointed chancellor of the New York Court of Chancery in 1814. This court was a court of equity, which applied rules of fairness, rather than a court of law, which applied common and statutory law to the resolution of disputes. Most of the matters before it involved commercial disputes. As chancellor Kent was empowered to do justice based on the particular facts of each case and the equitable principles that had developed in England. He used his equity powers to effect his sense that commercial bargains ought to be subject to some equitable scrutiny to ensure that unconscionable advantage was not taken.

By law Kent was forced to retire from the bench at age 60, in 1823. He returned to the private PRACTICE OF LAW and was reappointed to a professorship at Columbia. He was consulted by lawyers and judges about legal issues, and gave a series of lectures at Columbia that became, in revised form, the core of his *Commentaries*. This treatise, which was published in four volumes, was similar to Blackstone's *Commentaries* in scope but did not follow Blackstone's precisely in form. Kent's *Commentaries* covered INTERNATIONAL LAW, the Constitution and government of the United States, the municipal laws of the states, personal rights, and real and PERSONAL PROPERTY. It quickly became an authoritative and classic example of the U.S. treatise tradition. Five editions were published in Kent's lifetime, and many more followed in the nineteenth century. The twelfth edition (1873) was edited by OLIVER WENDELL HOLMES, JR.

Kent died December 12, 1847, in New York City.

CROSS REFERENCE

Blackstone's Commentaries.

KENT STATE STUDENT KILLINGS

In 1970 the United States was in the middle of the VIETNAM WAR, and anti-war demonstrations among students around the country were frequent. However, one at Kent State University in Kent, Ohio (near Akron) turned deadly. In 13 seconds of rifle fire, four students were killed and nine others injured by a NATIONAL GUARD contingent called in to quell the crowd. The tragic event cast the university into the international spotlight, and changed the face of student demonstrations forever.

The rioting had begun on Friday, May 1, 1970, when several students organized an on-campus demonstration to protest U.S. troops entering Cambodia. That evening, a crowd of drinking and agitated students moved off campus and began BREAKING windows in the center of town. Police were called in to disperse the crowd. The Kent city mayor, having heard rumors of a radical plot in the making, declared a state of emergency and Ohio officials called in the National Guard. Local bars were closed by authorities, and rioters were herded back toward the campus with tear gas.

By Saturday the agitated demonstrators had threatened local merchants and surrounded the on-campus barracks of the Army Reserve Officer Training Corps (ROTC), setting the building on fire. When firemen attempted to extinguish the blaze, the rioters punctured or cut open their water hoses. National Guard troops again cleared the campus. The hostility intensified on Sunday, when the crowd failed to disperse on orders to do so. The Ohio Riot Act was read to them and tear gas was fired. The hostile rioters regrouped and moved into town, where the Riot Act was again read to them and tear gas was again used. Several persons, including guardsmen, were injured.

By noon on Monday, May 4, approximately 2,000 demonstrators gathered and were ordered to disperse. They responded with curses and rocks. Eventually, tear gas was again employed but was ineffectual in the afternoon breeze. As the crowd grew more agitated, it was herded by guardsmen toward an athletic practice field surrounded by fence. After being pelted with rocks, the guardsmen receded but were followed by angry demonstrators, some as close as 20 yards. Guardsmen turned and fired several shots toward the demonstrators, felling several of

Students approach one of the four classmates slain when National Guard troops opened fire on protesters during the May 1970 riots at Kent State University.

UPI/CORBIS-BETTMANN.

them. Within seconds, four persons lay dying and nine more were wounded; all 13 were students. A University ambulance moved through the crowd, announcing over a public address system that demonstrators were to pack their things and leave the campus immediately.

Shock and disbelief of the tragic events spread worldwide within hours. By the following morning, James A. Rhodes, governor of Ohio, had called in the FEDERAL BUREAU OF INVESTIGATION (FBI). RICHARD M. NIXON, PRESIDENT OF THE UNITED STATES, invited six Kent student representatives to meet with him after their meeting with a state congressman.

On May 21, 1970, Attorney General JOHN MITCHELL announced that the JUSTICE DEPARTMENT would investigate the shootings to determine whether there had been criminal violations of federal laws. Two weeks later, the Ohio legislature passed a new campus riot bill providing for swift action and stiff penalties for those charged in connection with disturbances at state-assisted colleges and universities.

By June 10 the first private lawsuit for WRONGFUL DEATH was filed in federal court by the father of a killed student. Governor Rhodes and two Ohio National Guard commanders were named as defendants. The parent also filed a second suit against the state of Ohio in local Portage County Court of COMMON PLEAS. A few days later, the White House announced the naming of a special commission to investigate campus unrest at Kent, as well as the deaths of two black students at Jackson State University in Mississippi.

In September 1970, the President's Commission on Campus Unrest released its general report, which found the National Guard shootings "unwarranted." The report also found that the "violent and criminal" actions by students contributed to the tragedy and caused them to bear responsibility for deaths and injuries of fellow students. According to Kent State University Library archives, the report concluded that "The Kent State tragedy must surely mark the last time that loaded rifles are issued as a matter of course to guardsmen confronting student demonstrators."

A special state GRAND JURY issued indictments against 25 persons in October 1970, but found, in its 18-page report, that the guardsmen were not subject to criminal prosecution because they "fired their WEAPONS in the honest and sincere belief… that they would suffer serious bodily injury had they not done so." A federal district judge upheld the indictments against the individuals in January 1971. However, several private lawsuits against the state of Ohio were dismissed on grounds of SOVEREIGN IMMUNITY. Ohio's Eighth District Court of Appeals then ordered a lower court to consider on the merits any suits in which liability was based on the actions of individual Ohio state agents.

The Sixth CIRCUIT COURT of Appeals, meanwhile, upheld the Portage County Court's GAG ORDER prohibiting discussion of the shootings by 300 witnesses and others connected with the grand jury indictments. It also upheld the federal grand jury's 25 indictments and the district court's order to destroy the grand jury's report as prejudicial.

Going all the way to the U.S. Supreme Court was a challenge to Ohio's new anti-riot laws, but the Court, in a 6–1 decision, took no action and refused to delay scheduled trials. In November 1972, the first student was tried and convicted of the MISDEMEANOR of interfering with a fireman. The jury could not reach a VERDICT on FELONY charges of ARSON, rioting, and throwing rocks at firemen. A few more students pleaded guilty to first-degree riot charges. Prosecutors then dropped all charges against 20 remaining defendants on grounds of lack of evidence, having put their strongest cases first and not being successful in any felony convictions.

In May 1972 the AMERICAN CIVIL LIBERTIES UNION (ACLU) filed several suits totaling $12 million in damages in federal district court against the Ohio National Guard and the State of Ohio. More than a year later, in August 1973, the Justice Department announced that it would reopen its investigation. Also in 1973, a federal grand jury reviewed Justice Department evidence and issued indictments against eight former guardsmen, officially charging them with violating the CIVIL RIGHTS of students. In 1974 a federal district judge acquitted the guardsmen of all charges, ruling that U.S. prosecutors failed to prove willful or intentional deprivation of civil rights.

Once again, the U.S. Supreme Court issued a decision related to the tragedy. In the 1974 case of *Scheur v. Rhodes,* the Court reversed a lower court that found state officials immune from private suits by the parents of slain students. In 1975 all individual civil suits were

consolidated into one case, *Krause v. Rhodes.* Following a 15-week trial, a federal jury, by a 9–3 vote, acquitted all 29 defendants, including Ohio Governor James Rhodes. The decision was appealed and in 1977 the U.S. Circuit Court of Appeals for the Sixth Circuit ordered a retrial, based on evidence that at least one member of the jury had been threatened and assaulted. In January 1979 an OUT-OF-COURT SETTLEMENT was reached in all of the consolidated civil cases and approved by the Ohio State Controlling Board.

The $675,000 settlement was dispersed among 13 plaintiffs, the largest amount going to an injured student who was paralyzed in the incident. According to Kent University Library archived documents, the compensation was accompanied by a statement from the defendants that the May 4, 1970, tragedy "should not have occurred." The statement also noted that the Sixth Circuit had upheld as "lawful" the university's ban on rallies and its May 4 order for the students to disperse. The statement concluded, "We hope that the agreement to end this litigation will help assuage the tragic moments regarding that sad day."

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Protest; Riot; Vietnam War.

KENTUCKY RESOLUTIONS

See VIRGINIA AND KENTUCKY RESOLVES.

KEOGH PLAN

A retirement account that allows workers who are self-employed to set aside a percentage of their net earnings for retirement income.

Also known as H.R. 10 plans, Keogh plans provide workers who are self-employed with savings opportunities that are similar to those under company pension plans or individual retirement accounts (IRAs). However, Keogh plans allow for a much higher level of contribution, depending on the type of plan selected.

Keogh plans were established in 1962 by the Self-Employed Individuals Tax Retirement Act (26 U.S.C.A. § 1 et seq.) and modified by provisions in the EMPLOYEE RETIREMENT INCOME SECURITY ACT of 1974 (29 U.S.C.A. § 1 et seq.), the Economic Recovery Tax Act of 1981 (26 U.S.C. A. § 1 et seq.), and the Tax Equity and Fiscal Responsibility Act of 1982 (26 U.S.C.A. § 1 et seq.). Keogh plans are considered tax shelters because Keogh contributions, which are deductible from a taxpayer's gross income, and the earnings they generate are considered tax free until they are withdrawn when the contributor retires or dies. At the time of withdrawal, the money is taxable as ordinary income.

Self-employed individuals are defined as people who pay their own SOCIAL SECURITY taxes on their net income. This net income cannot include any investment earnings, wages, or salary. The self-employment does not have to be full-time; in fact, workers who are self-employed on the side can have a separate IRA or other retirement account in the pension plan of the company that pays their wages or salary.

Self-employed taxpayers who own a business and set up a Keogh plan for themselves are also required to set up a Keogh plan for each employee who has worked for their company for at least 1,000 hours over a period of three or more years. The level of contributions allowed depends on the type of Keogh plan chosen.

Four different types of Keogh plans are available: profit sharing, money-purchase pension, paired, and defined benefit. Profit sharing plans are most often set up by small businesses because they require a minimal contribution by employees. The maximum amount that may be contributed to this type of plan is 13.04 percent of an employee's net income, up to a total of $22,500 per year.

Money-purchase pension plans are often used by high-income earners because the percentage contribution is fixed on an annual basis; the amount can be changed only once a year or through termination of the plan. This plan's contribution limit is 20 percent of net income, up to a total of $30,000 per year.

Paired plans merge the benefit of the high contributions allowed by money-purchase pension plans with the flexibility of profit sharing plans. For example, an employee may make a money-purchase plan contribution of 7 percent

and then contribute between 0 and 13 percent of her or his remaining net income to a profit sharing plan. With this plan, an employee can make the maximum 20 percent contribution the money purchase plan allows but still be able to change the contribution amount throughout the year.

Defined-benefit plans require a minimum contribution of $30,000 per year, so are not available to everyone who is self-employed. Generally, contributors to these plans will employ an actuary to determine the amount of money to be contributed.

Contributors to all Keogh plans are eligible to begin receiving benefits when they are age 59½. At this point the payments are taxed as income. If any portion of the money in a Keogh plan is withdrawn early (before age 59½), a 10 percent penalty tax is imposed, in addition to the normal income tax. A 15 percent penalty tax is imposed if the contributor does not start receiving benefits before age 70½.

Money can be collected from a Keogh plan in several different ways. The two most common ways are lump sums and installments. Lump-sum payments are subject to regular income taxes. However, with a tax break called forward averaging, just one tax is paid. This tax is determined by calculating the total amount that would have been paid if the money had been collected in installments. This advantage reduces the amount of total income tax paid on the plan.

Installment distributions can be set up in several different ways and for various lengths. For example, they can be paid annually for ten years or annually for the number of years the recipient is expected to live. Each distribution is taxed as ordinary income.

In the event that the contributor dies before reaching age 59½, the contributor's heirs will receive the money that is in the Keogh plan, minus income taxes. In this case no penalty taxes are imposed for early withdrawal.

As a general rule of thumb, Keogh plan accounts are judgment proof. Their funds can be seized or garnished only in certain situations. For instance, the government can take Keogh funds to pay personal back taxes owed, and a spouse, ex-spouse, or children may be declared entitled to receive a portion of Keogh money by a court order if the contributor owes alimony or CHILD SUPPORT.

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v KEVORKIAN, JACK

Jack Kevorkian has become the most well-known advocate in the United States for the cause of physician-assisted SUICIDE. Having helped an estimated 130 terminally or chronically ill individuals kill themselves between 1990 and 1999, Kevorkian sparked a national debate on the ethical issues involved in EUTHANASIA, or mercy killing. Although Kevorkian has argued that his actions have prevented needless suffering for patients in pain and that it has allowed them to die with dignity, others see his work as a violation of the medical profession's most cherished ethical principles affirming life over death. Working in an area of vexing ethical issues, Kevorkian was championed as a breaker of unnecessary taboos surrounding death. His crusade ended in 1999 when a Michigan state court convicted him of second-degree MURDER.

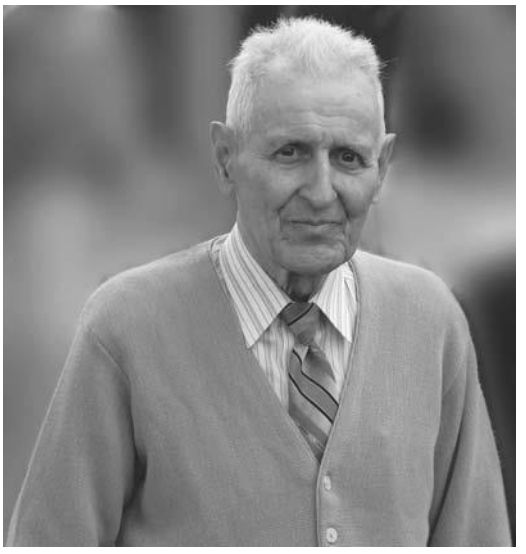
Kevorkian became a focus of national attention in 1990, after he assisted the suicide of Janet Adkins, a 45-year-old woman who was suffering from Alzheimer's disease, a degenerative disease of the brain that causes memory loss and intellectual impairment. Adkins had heard through the media about Kevorkian's invention of a "suicide machine" that allowed individuals who were ill to administer a lethal dose of poison to themselves. The machine, which Kevorkian assembled out of $45 worth of materials, consisted of three dripping bottles that delivered successive doses of three fluids: a harmless saline solution; a painkiller; and, finally, a poison, potassium chloride. When Adkins contacted Kevorkian about using the machine on her, Kevorkian agreed to assist her. Kevorkian diagnosed Adkins as suffering from Alzheimer's and arranged to perform the ASSISTED SUICIDE in a public park, in his rusting, 1968 Volkswagen van. After Kevorkian had inserted an intravenous needle into her arm, Adkins pressed a red button that caused the machine to administer the painkiller and then the poison. Within five

minutes, Adkins died of heart failure. Within days, Kevorkian had become a national media celebrity, appearing on such television shows as *Nightline, Geraldo,* and *Good Morning, America.*

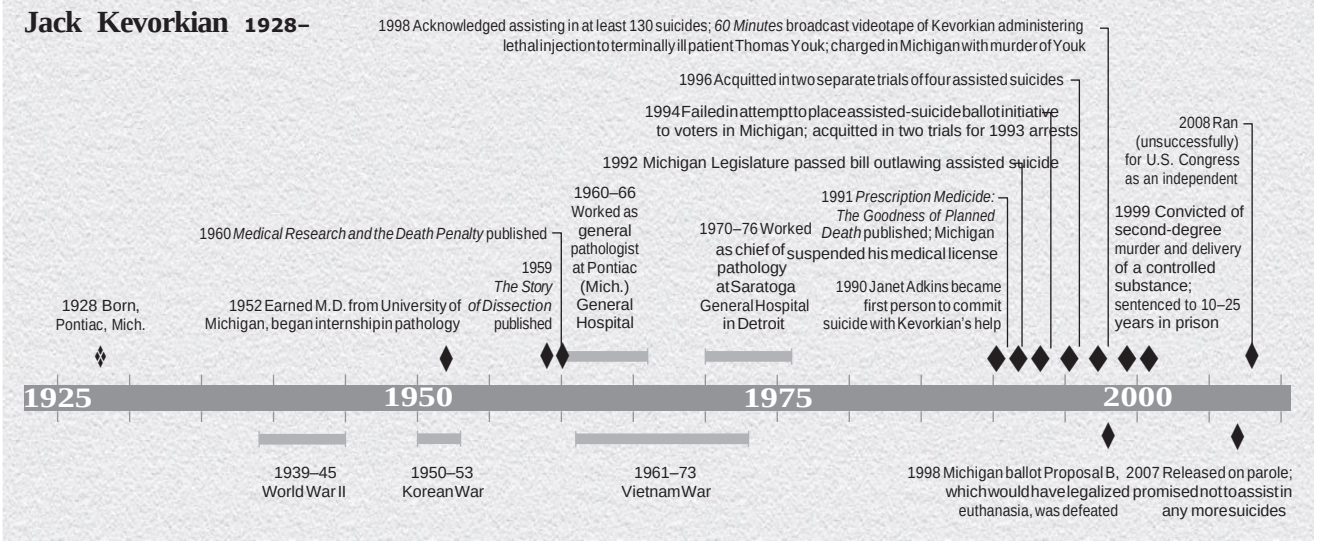
This first of Kevorkian's assisted suicides illustrated the objections that many observers raise toward Kevorkian's methods. Although she had begun to show early signs of Alzheimer's, Adkins was otherwise in good health and was not terminally ill; she committed suicide more out of fear of future suffering than out of current suffering. She had joined the Hemlock Society—an organization that advocates voluntary euthanasia for terminally ill patients—even before she became ill. In addition, Adkins's Alzheimer's might have impaired her ability to make decisions. Some observers wondered whether she was also suffering from depression, a treatable mental illness. Moreover, in cases in which a terminally ill patient has expressed a desire to die, established rules of medical ethics require that two independent doctors must confirm that the patient's condition is unbearable and irreversible; Kevorkian had ignored this requirement.

Kevorkian was charged with first-degree murder in the Adkins case, but a judge ruled that prosecutors failed to show that Kevorkian had planned and carried out Adkins's death. Attempts to prosecute Kevorkian were hampered by Michigan's lack of any law against physician-assisted suicide. Most other states have laws that make this act a FELONY.

In early 1991 a Michigan judge issued an injunction barring Kevorkian's use of the suicide machine, and in the same year, the state of Michigan suspended his medical license. Kevorkian defied such legal actions and continued to help ailing people to end their lives. Now that he no longer could prescribe drugs, Kevorkian assisted with suicides by providing a contraption that administered carbon monoxide through a gas mask. As he practiced assisted suicide and published on the subject—describing it in his own terms as "medicide" or "planned death"—he continued to be surrounded by controversy. For example, an autopsy that was performed on the body of the second person whom he had helped to commit suicide, a patient who had complained of a painful pelvic disease, found no evidence of any disease.



Jack Kevorkian.
GETTY IMAGES



In 1992 the Michigan Legislature passed a bill outlawing assisted suicide, designed specifically to stop Kevorkian's activities (Mich. Comp. Laws § 752.1021). This law was used to charge Kevorkian with assisting in the death of Thomas W. Hyde, Jr., in August 1993. Kevorkian was jailed twice that year, in November and December. During his second jail stay, he embarked on an 18-day fast in which he protested his arrest by drinking only juice. His bail was reduced and was paid by Geoffrey Fieger, a flamboyant lawyer who has done a great deal for Kevorkian's cause as his friend and legal counsel. Kevorkian was found not guilty.

Kevorkian then attempted to place before Michigan voters a ballot initiative, Movement Ensuring the Right to Choose for Yourself (MERCY), which sought to amend the Michigan Constitution in order to guarantee competent adults the right to request and to receive medical assistance in taking their own lives. However, he failed to garner enough signatures to put the initiative on the 1994 ballot. In December 1994 the Michigan Supreme Court upheld the law that had made assisted suicide a crime, and in 1995 the U.S. Supreme Court refused to hear Kevorkian's appeal.

THE VOLUNTARY SELF-ELIMINATION OF INDIVIDUAL AND MORTALLY DISEASED OR CRIPPLED LIVES TAKEN COLLECTIVELY CAN ONLY ENHANCE THE PRESERVATION OF PUBLIC HEALTH AND WELFARE.
—JACK KEVORKIAN

Kevorkian continued to assist in suicides even as prosecutors in his home county unsuccessfully attempted to convict him on charges of murder or assisted suicide. On May 14, 1996, an Oakland County CIRCUIT COURT jury again acquitted Kevorkian of assisted suicide. In that case, the prosecution had argued that assisted suicide was a crime under Michigan common law. After the acquittal, county prosecutors suggested then that it was unlikely that they would take Kevorkian to trial again.

In his actions and his statements, Kevorkian flouted the ethical standards of the medical profession on the issue of assisted suicide. The AMERICAN MEDICAL ASSOCIATION, a national professional association of physicians, specifically forbids the practice of physician-assisted suicide. Many doctors deplore Kevorkian's techniques and see them as endangering the trust that must exist between physician and patient. Even the Hemlock Society opposes Kevorkian's actions, citing his lack of typical procedural precautions.

In 1998 Kevorkian allowed the CBS television program *60 Minutes* to tape the lethal injection of Thomas Youk, a patient who was suffering from Lou Gehrig's disease. After the broadcast, county prosecutors again brought a second-degree murder charge against Kevorkian, who served as his own counsel in his trial. On March 26, 1999, a jury in Oakland County convicted him of second-degree murder and illegal delivery of a controlled substance. He was sentenced in April 1999 to 10 to 25 years in prison. During the next three years, he sought to appeal the conviction to appeals court in Michigan. However, the Michigan Court of Appeals affirmed the conviction, and the Michigan Supreme Court declined to review the appellate court's decision. Lawyers representing Kevorkian sought to appeal the case to the U.S. Supreme Court, but it declined to review the case. He spent eight years in prison and was paroled in June of 2007 after promising not to assist in any more suicides.

Kevorkian's efforts in the cause of assisted suicide were only the latest in a series of his unconventional, even morbid, attempts to make a name for himself in the area of medical research. Kevorkian had earned the nickname Dr. Death in 1956, only four years after obtaining his medical degree, when he began making what he called death rounds at the Detroit-area hospital where he was employed. During those rounds, he examined dead bodies in order to collect evidence supporting his contention that the time of a person's death could be determined from the condition of the person's eyes. Kevorkian caused more controversy—and lost his job at the University of Michigan—in 1960, when he published the book *Medical Research and the Death Penalty,* in which he argued for the vivisection (i.e., the conduct of medical experiments on live subjects) of prisoners who had been sentenced to death. Claiming it would be "a unique privilege … to be able to experiment on a doomed human being," he outlined a plan in which the prisoner-subject would be anesthetized at the time of execution, then used for scientific experiments lasting hours or months, and finally executed using a lethal overdose. According to Kevorkian, this practice would create both a more painless execution and greater advances in medical research. The use of condemned prisoners for medical experimentation and organ donation has remained a consistent theme for Kevorkian. His 1991 book *Prescription: Medicide: The Goodness of Planned Death* rehashes these same arguments while also making a case for assisted suicide. In another

unsuccessful venture, Kevorkian re-created experiments in which Soviet scientists had taken blood from recently deceased individuals and transfused it to live patients.

In a later article that set forth his plans for assisted suicide, Kevorkian suggested setting up suicide clinics: "The acceptance of planned death implies the establishment of well-staffed and well-organized medical clinics ('obitoria') where terminally ill patients can opt for death under controlled circumstances of compassion and decorum." As his use of the terms *obitoria* and *medicide* indicate, Kevorkian has a penchant for coining words. He dubbed his first suicide machine alternately a *mercitron* or a *thanatron*—the latter from the Greek word for death, *thanatos*—and has used the word *obitiatry* to indicate the medical specialization in death.

Kevorkian was born May 26, 1928, in Pontiac, Michigan. Named Murad Kevorkian at birth by his Armenian immigrant parents, he was the first of his family to attend college. He attended the University of Michigan Medical School and did his internship at Detroit-area hospitals. Acquaintances of Kevorkian testify to his prodigious intellect. The retired physician has demonstrated talent as a writer, painter, and composer. A series of 18 paintings that he made on such grisly topics as GENOCIDE, hanging, and cannibalism created a stir in Michigan during the 1960s. Kevorkian also has commented that his unconventional ideas have been influenced by the history of his Armenian ancestors, particularly the genocide in which 1.5 million Armenians were killed during WORLD WAR I by the Turks. Kevorkian has never married.

Although many deplore his actions, Kevorkian has increased public awareness of some of the most difficult ethical issues surrounding DEATH AND DYING. With medical technology's increasing ability to prolong life have come more situations that bring great pain and suffering. Kevorkian's efforts to assist people in their deaths, although often falling short of accepted professional standards of diagnosis and care, have sparked a needed discussion on these issues. Nevertheless, even supporters of euthanasia sought to distance themselves from Kevorkian's practices after his convictions, drawing distinctions between his practices and their own beliefs in physician-assisted suicide.

Since he was paroled in 2007, Kevorkian has spoken to large audiences, addressing a crowd of 4,867 people at the University of Florida in January 2008. In February 2009 Kevorkian lectured to students and faculty at Nova Southeastern University in Davie, Florida, discussing tyranny, the criminal justice system and politics. At the end of this lecture, Dr. Kevorkian unveiled an American Flag with a swastika where the field of stars should reside. He claimed the flag was intended to shock and remind everyone that this is where America is headed if changes are not made.

In 2008 Kevorkian ran for the U.S. Congress to represent Michigan's 9th Congressional District, as an independent. His efforts did not get him elected, but he did receive 9,000 votes.

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CROSS REFERENCE

Physician-Assisted Suicide

KEY NUMBERS®

A system devised by West Group involving the classification of legal subjects that are organized within their publications according to specific topics and subtopics. Each topic and subtopic is given a key number that consists of one or more digits preceded by the symbol of a key assigned to each individual classification.

A particular point of law can be traced through different law books by following the cases listed under a Key Number in each series. West Group, formerly the West Publishing Company, developed the Key Number System of Classification during the decade spanning 1897–1906. The system is a valuable research tool because once the topic and Key Number have been located, a researcher has ready access to all American cases that have litigated that issue provided those cases have been reported. More than 425 Key Numbers in the system are arranged by subject matter under seven main headings—persons, property, contracts, torts, crimes, remedies, and government—and 32 subdivisions of the system.

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KEYCITE™

An interactive, computer-assisted citatory service that allows legal researchers to verify the validity of a case and to find all references that have cited that case as authority.

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Quotation marks are used in KeyCite displays to signify that a cited case has been quoted by another court. Based on the idea that cases cited more frequently tend to be more significant, KeyCite tallies citation counts for every case within its coverage. Although KeyCite coverage is not comprehensive, it is available for a growing number of types of authorities. Beginning coverage for state case citations varies according to jurisdiction. Citator coverage now also covers state and federal statutes.

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Citator; Westlaw®.

KEYES, WADE, JR.

See CONFEDERATE ATTORNEYS GENERAL.

KICKBACK

The seller's return of part of the purchase price of an item to a buyer or buyer's representative for the purpose of inducing a purchase or improperly influencing future purchases.

Under federal law kickbacks involving government officials or funds provided by the government are illegal. Kickbacks between a contractor and a government official or government employee are prosecuted under the federal bribery statute, 18 U.S.C.A. § 201. Kickbacks between private contractors working under a federal contract are prosecuted under 41 U.S.C.A. §§ 51–58, otherwise known as the Anti-Kickback Enforcement Act of 1986. Kickbacks to employees or officials of foreign governments are prohibited under the Foreign Corrupt Practices Act of 1977 (15 U.S.C.A. § 78dd-1 et seq.). Most states have commercial bribery statutes prohibiting various forms of kickbacks.

One notable public figure accused of profiting from a kickback scheme was Spiro T. Agnew, vice PRESIDENT OF THE UNITED STATES under RICHARD M. NIXON. While governor of Maryland, Agnew oversaw a system in which engineering firms working under state construction contracts paid kickbacks that went 25 percent to the state official who arranged the deal, 25 percent to the official who brought the deal to Agnew, and 50 percent directly to Agnew himself. In another arrangement Agnew demanded a kickback of five cents for every pack of cigarettes sold in vending machines located in Maryland state buildings. These kickbacks were secret, illegal, and not reported on Agnew's income tax returns. Agnew continued to collect them after he became vice president. He resigned the vice presidency in 1973 as part of a PLEA bargain that allowed him to avoid going to jail for income TAX EVASION in connection with those kickbacks.

Spiro Agnew, vice president under Richard Nixon, was accused of taking kickbacks while he was governor of Maryland and later vice president. On October 10, 1973, he chose to resign from office rather than face a conviction for tax evasion.

AP IMAGES

Though many types of kickbacks are prohibited under federal and state law, kickbacks are not illegal per se. If a kickback does not specifically violate federal or state laws and such kickbacks are made to clients throughout the industry, the kickback may be normal, legal, and even tax deductible. According to section 162(a) of the INTERNAL REVENUE CODE (26 U.S.C.A. § 162), "all the ordinary and necessary expenses" that an individual or business incurs during the taxable year are deductible, including kickbacks as long as the kickbacks are not illegal and are not made to an official or employee of the federal government or to an official or employee of a foreign government.

On several occasions the courts have ruled on the deductibility of specific legal kickbacks. In most cases the courts have found these kickbacks to be not deductible because they are not ordinary in the sense of usual and customary. In *Bertoloni Trucking Co. v. Commissioner of Internal Revenue,* 736 F.2d 1120, 84-2 U.S.T.C. P 9591 (1984), however, the Court of Appeals for the Sixth Circuit interpreted the term *ordinary* quite differently. Reviewing Supreme Court cases dealing with the interpretation of *ordinary* in

section 162(a), the court identified two lines of interpretation: one held that the term meant "usual and customary," the other held that the term was intended to distinguish payments of a capital nature from payments of a recurring nature, which were thus deductible currently. In *Bertolini* the court held that this second line of interpretation was more consistent with legislative intent, and thus ruled that kickbacks made by the Bertolini Trucking Company were tax deductible.

In a very similar case, the same court came to a different conclusion. In *Car-Ron Asphalt Paving Co. v. Commissioner of Internal Revenue,* 758 F.2d 1132 (6th Cir. 1985), Car-Ron Asphalt Paving Company had paid legal kickbacks to Nicholas Festa, the same contractor to whom Bertolini Trucking had paid kickbacks. As in *Bertolini* the TAX COURT had ruled that such payments were not tax deductible because they were not necessary and ordinary. As not in *Bertolini,* the appeals court ruled that the payments Car-Ron had made to Festa were not necessary business expenses, because throughout its 13-year history, the company had obtained nearly all of its contracts without making such payments.

Beginning in the 1970s the health care industry became the particular focus for government efforts to prevent kickbacks. As health care costs escalated in the late 1980s and 1990s, efforts to prevent FRAUD intensified, resulting in 1995 in the passage of the MEDICARE Fraud Statute (42 U.S.C.A. §§ 1320a–1327b). This statute prohibits kickback schemes such as those in which hospitals pay physicians in private practice for patient referrals, and drug companies and medical device manufacturers pay physicians to prescribe their products to patients. The Medicare Fraud Statute makes it illegal for anyone to pay or receive "any remuneration (including any kickback, bribe or rebate)" to induce the recipient to purchase, order, or recommend purchasing or ordering any service reimbursable under Medicare or MEDICAID. Some experts in the area of health care fraud suggest that the Medicare Fraud Statute should be used as a model for constructing a general antikickback statute that would prevent kickback arrangements in all areas of the health care industry, not just Medicare and Medicaid.

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KIDNAPPING

Kidnapping is the crime of unlawfully seizing and carrying away a person by force or fraud or seizing and detaining a person against his or her will with an intent to carry that person away at a later time.

The law of kidnapping is difficult to define with precision because it varies from jurisdiction to jurisdiction. Most state and federal kidnapping statutes define the term *kidnapping* vaguely, and courts fill in the details.

Generally, kidnapping occurs when a person, without lawful authority, physically asports (i.e., moves) another person without that other person's consent, with the intent to use the abduction in connection with some other nefarious objective. Under the MODEL PENAL CODE (a set of exemplary criminal rules fashioned by the American Law Institute), kidnapping occurs when any person is unlawfully and non-consensually asported and held for certain purposes. These purposes include gaining a ransom or reward; facilitating the commission of a felony or a flight after the commission of a felony; terrorizing or inflicting bodily injury on the victim or a third person; and interfering with a governmental or political function (Model Penal Code § 212.1).

Kidnapping laws in the United States derive from the COMMON LAW of kidnapping that was developed by courts in England. Originally the crime of kidnapping was defined as the unlawful and non-consensual transportation of a person from one country to another. In the late nineteenth and early twentieth centuries, states began to redefine kidnapping, most notably eliminating the requirement of interstate transport.

At the federal level, Congress passed the LINDBERGH ACT (48 Stat. 781 [codified at 18 U.S.C.A. §§ 1201 et seq.]) in 1932 to prohibit interstate kidnapping. The Lindbergh Act was named for Charles A. Lindbergh, a celebrated aviator and Air Force colonel whose baby was kidnapped and killed in 1932. The act provides that if a victim is not released within 24 hours after being abducted, a court may presume that the victim was transported across state lines.

This presumption may be rebutted with evidence to the contrary. Other federal kidnapping statutes prohibit kidnapping in U.S. territories, kidnapping on the high seas and in the air, and kidnapping of government officials (18 U.S.C.A. §§ 1201 et seq., 1751 et seq.).

A person who is convicted of kidnapping is usually sentenced to prison for a certain number of years. In some states, and at the federal level, the term of imprisonment may be the remainder of the offender's natural life. In jurisdictions that authorize the death penalty, a kidnapper is charged with a capital offense if the kidnapping results in death. Kidnapping is so severely punished because it is a dreaded offense. It usually occurs in connection with another criminal offense, or underlying crime. It involves violent deprivation of liberty, and it requires a special criminal boldness. Furthermore, the act of moving a crime victim exposes the victim to risks above and beyond those that are inherent in the underlying crime.

Most kidnapping statutes recognize different types and levels of kidnapping and assign punishment accordingly. New York State, for example, bases its definition of first-degree kidnapping on the purpose and length of the abduction. First-degree kidnapping occurs when a person abducts another person to obtain ransom (N.Y. Penal Code § 135.25 [McKinney 1996]). First-degree kidnapping also occurs when the abduction lasts for more than 12 hours and the abductor intends to injure the victim; to accomplish or advance the commission of a felony; to terrorize the victim or a third person; or to interfere with a governmental or political function. An abduction that results in death is also first-degree kidnapping. A first-degree kidnapping in New York State is a class A-1 felony, which carries a sentence of at least 20 years in prison (§ 70.00).

New York State also has a second-degree kidnapping statute. A person is guilty of second-degree kidnapping if he or she abducts another person (§ 135.20). This crime lacks the aggravating circumstances in first-degree kidnapping, and it is ranked as a class B felony. A person who is convicted of a class B felony in New York State can be sentenced to one to eight years in prison (§ 70.00).

Two key elements are common to all charges of kidnapping. First, the asportation or detention must be unlawful. Under various state and federal statutes, not all seizures and asportations constitute kidnapping: Police officers may arrest and jail a person they suspect of a crime, and parents are allowed to reasonably restrict and control the movement of their children.

Second, some aggravating circumstance must accompany the restraint or asportation. This circumstance can be a demand for money; a demand for anything of value; an attempt to affect a function of government; an attempt to inflict injury on the abductee; an attempt to terrorize a third party; or an attempt to commit a felony.

In most states, kidnapping statutes specify that any unlawful detention or physical movement of a child, other than that performed by a parent or guardian, constitutes kidnapping. An abduction of a child thus need not be accompanied by some other circumstance, such as extortion or physical injury, to qualify for the highest level of kidnapping charge. In the absence of an aggravating circumstance, an unlawful, non-consensual restraint or movement is usually charged as something less than the highest degree or level of kidnapping.

Many states have enacted special laws for car-jacking, a specialized form of kidnapping. Generally, car-jacking occurs when one person forces a driver out of the driver's seat and steals the vehicle. Car-jacking is a felony whether the aggressor keeps the victim in the car or forces the victim from the car. In California a car-jacking statute is contained within the penal code's chapter on kidnapping, and it carries a sentence of life imprisonment without the possibility of parole (Cal. Penal Code § 209.5 [West]).

Kidnapping laws are similar to laws on unlawful or felonious restraint, parental kidnapping, and FALSE IMPRISONMENT. These crimes cover the range of unlawful-movement and unlawful-restraint cases. Felonious or unlawful restraint, also known as simple kidnapping, is the unlawful restraint of a person that exposes the victim to physical harm or places the victim in SLAVERY. It is a lesser form of kidnapping because it does not require restraint for a specified period or specific purpose (such as to secure money or commit a felony). False imprisonment is a relatively inoffensive, harmless restraint of another person. It is usually a misdemeanor, punishable by no more than a year in jail. Parental kidnapping is the

abduction of a child by a parent. The law on parental kidnapping varies from jurisdiction to jurisdiction: Some jurisdictions define it as a felony; others as a misdemeanor. Many states consider parental kidnapping to be less offensive than classic kidnapping because of the strong bond between parents and children.

The chief judicial concern with the charge of kidnapping is *DOUBLE JEOPARDY*, which is multiple punishment for the same offense. It is prohibited by the FIFTH AMENDMENT to the U.S. CONSTITUTION. Kidnapping often is an act that facilitates another offense, such as RAPE, ROBBERY, or assault. Rape, robbery, and assault often involve the act of moving a person against his or her will, which is the GRAVAMEN (i.e., the significant element) of a kidnapping charge. Thus, a persistent problem with kidnapping prosecutions is in determining whether a kidnapping conviction would constitute a second punishment for the same act.

Legislatures have passed statutes, and courts have fashioned rules, to prevent and detect double jeopardy in kidnapping cases. Generally, these laws and rules hold that for kidnapping to be charged as a separate crime, some factor must set the asportation apart from a companion crime. Most courts will sustain multiple convictions if the asportation exposes the victim to increased risk of harm or results in harm to the victim separate from that caused by the companion offense. In other jurisdictions, the test is whether the asportation involves a change of environment or is designed to conceal a companion offense.

In most states, an asportation of a few feet may constitute the separate offense of kidnapping; in other states, distance is not a factor. In New York State, for example, the focus of the kidnapping statute is not distance, but purpose. Thus, an asportation of 27 city blocks might not constitute kidnapping if it is merely incidental to a companion crime (*People v. Levy,* 15 N.Y.2d 159, 256 N.Y.S.2d 793, 204 N.E.2d 842 [N.Y. 1965]). Likewise, an asportation from the borough of Manhattan to the borough of Queens might not constitute kidnapping if it plays no significant role in the commission of another crime (*People v. Lombardi,* 20 N.Y.2d 266, 282 N.Y.S.2d 519, 229 N.E.2d 206 [Ct. App. 1967]).

Some states have eliminated the asportation element from their kidnapping statutes. In Ohio, for example, kidnapping is defined in part as restraining the liberty of another person (Ohio Rev. Code Ann. § 2905.01 [Baldwin 1996]). This definition creates an increased risk of double jeopardy in kidnapping convictions because, by definition, every robbery, rape, or assault would constitute kidnapping. However, the Ohio state legislature has enacted a statute that prohibits multiple convictions for the same conduct unless the defendant exhibits a separate animus (i.e., a separate intent) to commit a separate crime (§ 2941.25). Whether the prosecution proves a separate animus to kidnap is a question of fact based on the circumstances surrounding the crime.

In *State v. Logan* (60 Ohio St. 2d 126, 397 N. E.2d 1345, 14 Ohio Op. 3d 373 [1979]), the Supreme Court of Ohio held that the defendant could not be convicted of both rape and kidnapping when he had moved the victim a mere few feet and had released the victim immediately after the rape. Under the facts of the case, the asportation had no significance apart from the rape offense. According to the court, the defendant had displayed no animus beyond that necessary to commit rape, so punishment for both rape and kidnapping was not warranted.

In contrast, in *State v. Wagner* (191 Wis. 2d 322, 528 N.W.2d 85 [Ct. App. 1995]), the appeals court upheld a separate conviction for kidnapping. In *Wagner*, the defendant approached two women on two separate occasions in a laundromat. Both times, the defendant tried to force the women into a bathroom to rape them. He was convicted of two counts of attempted first-degree sexual assault, one count of kidnapping while armed, and one count of attempted kidnapping while armed. On appeal, he argued that he should not have been convicted of kidnapping because, under section 940.31(1)(a) of the Wisconsin Statutes, kidnapping is defined in part as the carrying of a person "from one place to another," and he had not taken his victims to another place. The court disagreed, holding that forced movement from one room to another falls within the meaning of the kidnapping statute. Ultimately, the appeals court affirmed the defendant's sentence of 72 years in prison.

The kidnapping of children has presented a particularly emotional issue for lawmakers. In 1984, in response to the kidnapping and MURDER

of his son Adam, John Walsh founded the National Center for Missing and Exploited Children (NCMEC). NCMEC serves as a resource in providing assistance to parents, children, law enforcement, schools, and the community in recovering missing children and raising public awareness about ways to help prevent child abduction.

In 1996 the kidnapping and murder of Amber Hagerman in Texas inspired the Dallas/Fort Worth Association of Radio Managers and local law enforcement agencies in north Texas to create the nation's first AMBER ALERT plan. The word *AMBER*, in addition to being Amber Hagerman's first name, also serves as an acronym for America's Missing: Broadcast Emergency Response. Amber Alert plans allow the development of an early warning system to help find abducted children by broadcasting information over radio and television to the public as quickly as possible. This information includes descriptions and pictures of the missing child, the suspected abductor, a suspected vehicle, and any other information available and valuable to identifying the child and suspect.

An AMBER Alert plan has been implemented in all 50 states, with 120 plans nationwide. With this growth, AMBER Alert plans have become increasingly effective. In 2001 only two children were recovered as a result of an AMBER alert plan. Just five years later, in 2006, 69 children were recovered as a result of an AMBER alert plan. In total, AMBER Alert plans have been credited with helping to save the lives of 443 children, with more than 90 percent of those recoveries occurring since October 2002.

Due to the growing success of AMBER Alert plans, Congress enacted the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act, which was signed into law on April 30, 2003. The law, regarded by the NCMEC as "the most far-reaching legislation to date to protect America's children," creates a national network of AMBER Alert plans. It also provides for an AMBER Alert coordinator at the DEPARTMENT OF JUSTICE (DOJ), to oversee the communication network, and allocates $30 million in resources to enhancing the AMBER Alert plans already in place.

Among those present the day that President GEORGE W. BUSH signed the PROTECT Act was Elizabeth Smart, a victim of a child kidnapping. At 14 years of age, on June 5, 2002, Elizabeth Smart was taken at knifepoint from her bedroom in the family's Salt Lake City home. She was found in Sandy, Utah, nine months later, approximately 18 miles from her home. Brian David Mitchell and Wanda Eileen Barzee were with Elizabeth Smart when she was discovered, and they were ultimately indicted for her kidnapping.

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KILBERG DOCTRINE

A principle applied in lawsuits involving conflicts of law that provides that a court in the place where a wrongful death action is brought is not bound by the law of the place where the conduct causing death occurred concerning limitations on damages.

The rationale behind the KILBERG DOCTRINE is that laws that set limitations on damages are procedural and, therefore, the law of the forum should be applied.

KIN

Relation by blood or consanguinity; relatives by birth.

The term *kin* is ordinarily applied to relationships through ties of blood; however, it is sometimes used generally to include family relationships by affinity.

Kindred is a synonym for kin.

v KING, EDWARD

Edward King was a lawyer whose 1844 nomination to the U.S. Supreme Court failed because of political animosity between Congress and the president who proposed him.

King was born January 31, 1794, in Philadelphia. He was well educated and studied law under the prominent Pennsylvania lawyer Charles Chauncey. He was admitted to the Pennsylvania bar in 1816 and soon after entered politics, first as a Federalist and then as a Democrat. Before he was 30 years old, he had established himself as a leader of the DEMOCRATIC PARTY in Pennsylvania.

King became clerk of the Philadelphia orphans' court in 1824. The following year, he was named president judge of the Philadelphia Court of COMMON PLEAS. He was a highly respected jurist who did more to establish Pennsylvania's equity courts than did all the other judges of the state. Equity courts provided a necessary alternative for petitioners whose claims did not fit into the strictly prescribed rules of the common-law or common-pleas courts. Litigants seeking nonmonetary damages, such as an injunction or specific performance of a contract, were without remedy before the establishment of equity jurisdiction.

About the time King was rising to national prominence on the strength of his judicial reputation, the federal government was in flux. Many southern Democrats had become disenchanted with President ANDREW JACKSON and his policies, which they claimed eroded states' rights and led to the economic depression that followed his administration. In 1840, the newly formed WHIG PARTY, born of the South's alienation from Jackson, named WILLIAM H. HARRISON and JOHN TYLER as its candidates for president and vice president, respectively. Harrison won the election; one month after his inauguration, he died, and Tyler ascended to the presidency.

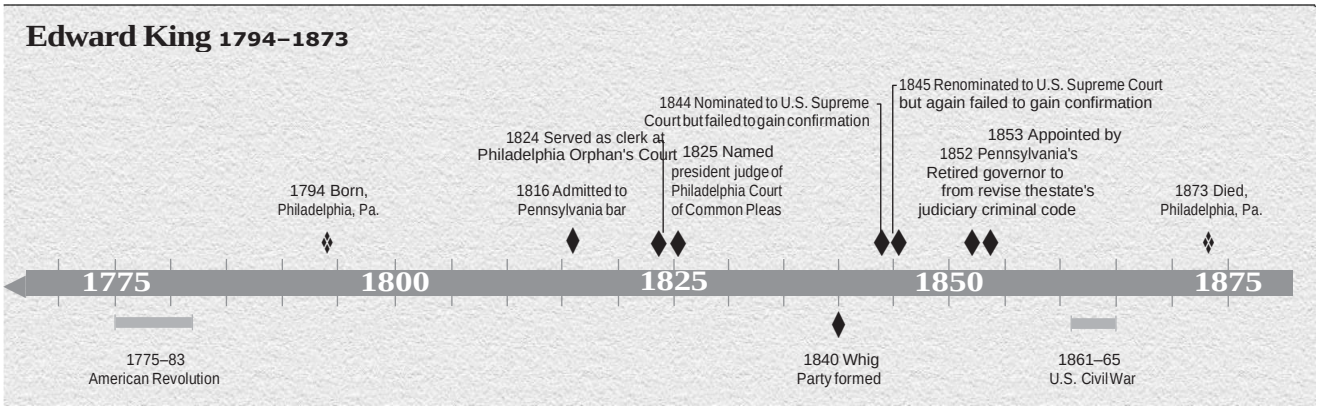
Tyler, who had originally been a Democrat, lacked strong congressional support from either the Democrats or the Whigs. When he nominated King to the Supreme Court on June 5, 1844, the Senate voted to postpone consideration of the proposal. Tyler reappointed King on December 4; in January 1845, the Senate again tabled the nomination. Finally, Tyler withdrew King's nomination on February 7.

King continued as president judge in the common-pleas court until his retirement from the judiciary in 1852. Shortly afterward, he was appointed by Pennsylvania's governor to a commission to revise the state's criminal code. The revision, written mainly by King and then reported to the legislature, was adopted almost literally as prepared.

King spent the remaining years of his life traveling and studying. He was a member of the American Philosophical Society and for many years was president of the BOARD OF DIRECTORS of Jefferson Medical College. He died in his hometown of Philadelphia on May 8, 1873.

v KING, MARTIN LUTHER, JR.

For 13 turbulent years, Martin Luther King Jr. was the inspirational leader and moral arbiter of the U.S. CIVIL RIGHTS MOVEMENT. An advocate of nonviolence, King helped organize well-publicized boycotts, marches, and demonstrations to protest segregation and racial injustice. From 1955 to 1968, he was the impassioned voice of African Americans who sought the abolishment

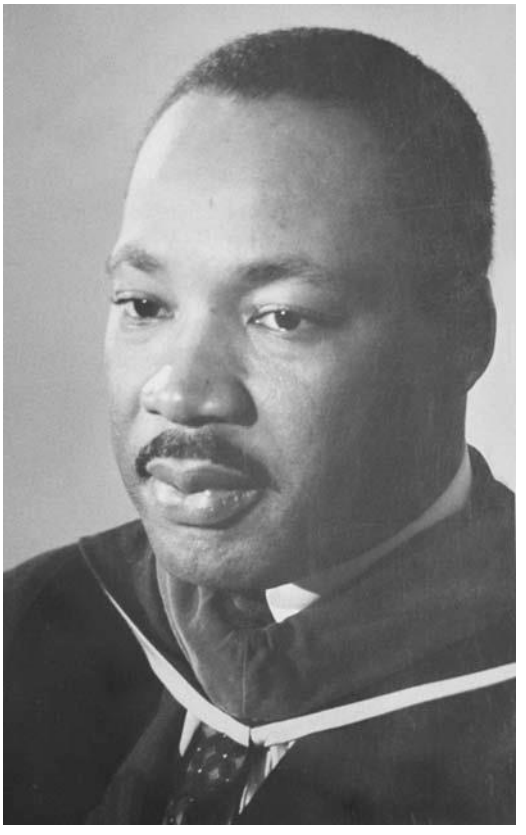


of JIM CROW LAWS (a series of regulations enacted to keep the races separate) and the guarantee of equal housing, education, voting rights, and employment. Although countless U.S. citizens contributed to the success of the CIVIL RIGHTS movement, King is its most enduring symbol. Before his mission was cut short by an assassin's bullet in 1968, he succeeded in permanently raising the social, economic, and political status of all people of color.

King was born January 15, 1929, in Atlanta, Georgia. At an early age, he demonstrated the intellect and drive that would propel him to national prominence. After skipping his senior year of high school, he enrolled in Atlanta's Morehouse College, at the age of 15. He earned a degree in sociology from Morehouse in 1948. Because both his father and grandfather were Baptist preachers, it was not surprising when King entered Crozer Theological Seminary, in suburban Philadelphia, at age 19. After graduating from Crozer as class valedictorian, King enrolled in Boston University's renowned School of Theology, where he earned a doctor's degree in 1955. While in Boston, he met and married Coretta Scott, a student at the Boston Conservatory.

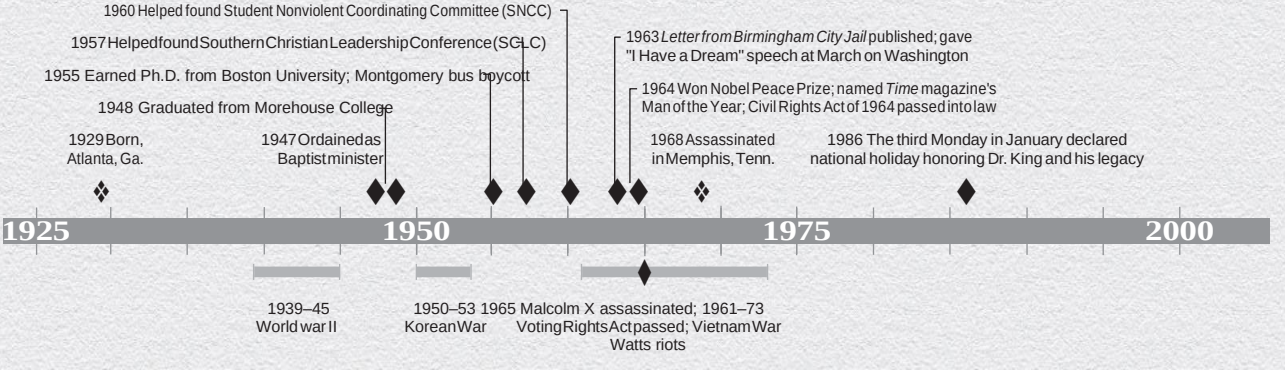
The young couple moved to Montgomery, Alabama, in 1954, after King accepted a position as minister of the Dexter Avenue Baptist Church. He was only 26 years old and had lived in Montgomery for just 18 months when an African American bus rider changed the course of his life forever.

On December 1, 1955, seamstress ROSA PARKS took a personal stand against the South's Jim Crow laws when she refused to give up her seat to a white person and move to the back of a city bus. In Montgomery, segregated seating on buses was mandated by ordinance. Parks's defiant act galvanized the city's African American community. A bus boycott was organized to support Parks after her arrest and to put an end to segregated public transportation. When the Montgomery Improvement Association was created to direct the protest, a somewhat



Martin Luther King Jr.
LIBRARY OF CONGRESS

Martin Luther King Jr. 1929–1968



surprised King was named president. Years later, those involved in the boycott explained that King was selected because of his powerful speaking style, his credibility as a clergyman, and his relatively low profile in Montgomery. Because King was a newcomer, he had not made any enemies within the African American community and had not been corrupted by dishonest white politicians.

With leadership thrust upon him, King took over the boycott. He rose to the challenge, creating peaceful strategies that placed the bus company in an economic squeeze and African Americans on the moral high ground. He was greatly influenced by Mohandas K. ("Mahatma") Gandhi's nonviolence movement in India. King denounced violence throughout the citywide boycott, only to encounter death threats, hate mail, physical attacks, mass arrests, and the bombing of his church and home. The possibility of death was constant, but King used his deep religious faith and inner strength to stare down fear. He told his followers, "Love your enemies; bless them that curse you. Remember, if I am stopped, this Movement will not stop, because God is with this Movement."

NONVIOLENCE IS THE ANSWER TO THE CRUCIAL POLITICAL AND MORAL QUESTIONS OF OUR TIME; THE NEED FOR MEN TO OVERCOME OPPRESSION AND VIOLENCE WITHOUT RESORTING TO OPPRESSION AND VIOLENCE.
—MARTIN LUTHER KING JR.

By November 1956 the boycott had taken the intended financial toll on the transit company. Seventy percent of Montgomery's bus riders were African Americans, and they supported the boycott in droves. The campaign was declared a success when the buses were at last desegregated in December 1956 and Montgomery's ordinance was declared unconstitutional by the U.S. Supreme Court (*Owen v. Browder,* 352 U.S. 903, 77 S. Ct. 145, 1 L. Ed. 2d 114 [1956]). More important, King and his fellow African Americans discovered the power of social protest and the virtue of nonviolence.

After Montgomery, King knew that his true calling was social activism. In 1957 he helped found the SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE, an organization that would guide the growing civil rights movement. During the late 1950s and early 1960s, King took part in dozens of demonstrations throughout the South and was arrested and jailed for his CIVIL DISOBEDIENCE. The national media and the administrations of Presidents DWIGHT D. EISENHOWER and JOHN F. KENNEDY took notice. King became the torchbearer for the nation's civil rights struggle.

In 1963 King and his fellow activists set out to integrate Birmingham, Alabama, which King called "the most thoroughly segregated city in the country." Unlike Montgomery, where the issue was limited to bus ridership, Birmingham offered a forum for far-reaching objectives. King's goal was to desegregate the entire community—its restaurants, hotels, department stores, rest rooms, and public facilities. As the sit-ins and marches began, the response by some white southerners was ugly. Extremists bombed an African American church, killing four young girls who were attending Sunday School inside. Police commissioner Eugene ("Bull") Connor ordered his officers to use high-pressure water hoses, police dogs, and clubs against the nonviolent demonstrators. Grade school and high school protesters were jailed alongside adults, and at one point, 3,000 African Americans were incarcerated in Birmingham. King himself was jailed and as a result wrote his historic 1963 essay *Letter from Birmingham City Jail,* an eloquent justification of nonviolent resistance to unjust laws. Throughout the saga, television cameras sent searing images of white brutality across the nation. As King hoped, federal intervention was required to handle the situation, and segregation laws were forced off the books.

Perhaps the crowning moment of King's career was the 1963 March on Washington, when 250,000 people from diverse racial and ethnic backgrounds converged in front of the Lincoln Memorial in Washington, D.C. Here, King delivered his famous "I Have a Dream" speech, which described a world of racial equality and harmony. The speech ended with these stirring words:

> When we let freedom ring, when we let it ring from every village and every hamlet, from every state and every city, we will be able to speed up that day when all of God's children, black men and white men, Jews and Gentiles, Protestants and Catholics, will be able at last to join hands and sing in the words of the old Negro spiritual, "Free at last! Free at last! Thank God Almighty, we are free at last!"

King was successful in pressuring the U.S. Congress and President LYNDON B. JOHNSON to support the Civil Rights Act of 1964 (42 U.S.C.A. § 2000a et seq.). The law guaranteed equal access for all U.S. citizens to public accommodations and facilities, employment, and education. In 1965 King's campaign in Selma, Alabama, helped ensure the passage of the VOTING RIGHTS ACT OF 1965 (42 U.S.C.A. § 1973

et seq.), which extended the vote to previously disenfranchised African Americans in the Deep South. The act outlawed the tests, standards, and procedures that were routinely used to disqualify voters on the basis of race.

King received several honors for his work, including the Nobel Peace Prize in 1964. The same year, he was the first African American to be named *Time* magazine's Man of the Year. Since 1986 the third Monday in January has been observed as a federal holiday in honor of King's birthday.

The last years of King's life were difficult, as he struggled with bouts of depression over personal and professional failures. His hold on the civil rights movement was clearly weakening. Young African American activists were demanding a more militant approach to achieving social and economic justice. The angrier BLACK POWER MOVEMENT appealed to increasing numbers of African Americans who were impatient with the slow pace of King's nonviolent tactics. King's campaigns in northern cities such as Chicago were largely unsuccessful.

On August 11, 1965, just days after the passage of the Voting Rights Act, the African American Watts area of Los Angeles erupted into a riot that lasted six days. Thirty-four people were killed, and $30 million worth of property was damaged. After the upheaval in Watts, King's message and influence were diminished.

In 1967 King publicly criticized the United States' involvement in Vietnam and earned the enmity of his former liberal ally President Johnson. Critics believed that King's entry into the peace movement diluted his efforts to achieve further gains for African Americans.

In the spring of 1968, King planned to participate in the Poor People's Campaign, in Washington, D.C. Before going to the nation's capital, he traveled to Memphis to support striking garbage workers there. On April 4, while standing on the balcony of his room at the Lorraine Motel, in Memphis, he was assassinated by James Earl Ray, a white man.

According to those who knew him, King did not set out to become a martyr for civil rights. As ELLA J. BAKER, a longtime activist, said, "The movement made Martin rather than Martin making the movement." King represents the dignity of the struggle and the sacrifice it required. Despite a tendency to deify King, he should be regarded not as a saint but as an extraordinary individual who used his prodigious talents to change society. When asked to describe his possible legacy, King himself said, "I just want to leave a committed life behind."

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KING, RODNEY G.

The 1991 beating of Rodney G. King by Los Angeles, California, police led to state and federal criminal prosecution of the law enforcement officers involved in the assault, a civil jury award of $3.8 million to King for his injuries, and major reforms in the Los Angeles police department. In addition, the April 1992 acquittal of the white police officers for the beating of King, an African American, touched off riots in Los Angeles that rank as the worst in U.S. history. The controversy surrounding each of these actions raised the issues of race, racism, and police brutality in communities throughout the United States.

On the evening of March 3, 1991, RODNEY KING was driving his automobile when a highway police officer signaled him to pull over

A still from amateur photographer George Holliday's videotape of the March 3, 1991, beating of Rodney King by members of the Los Angeles Police Department.
AP IMAGES

to the side of the road. King, who had been drinking, fled, later testifying that he was afraid he would be returned to prison for violating his parole. A high-speed chase ensued with a number of Los Angeles police officers and vehicles involved. The police eventually pulled King over. After King got out of his car, four officers—Stacey C. Koon, Laurence M. Powell, Timothy E. Wind, and Theodore J. Briseno—kicked King and hit him with their batons more than 50 times while he struggled on the ground.

Unbeknownst to the officers, an amateur photographer, George Holliday, videotaped 81 seconds of the beating. The videotape was shown repeatedly on national television and became a symbol of complaints about police brutality.

The four officers were charged with numerous criminal counts, including assault with a deadly weapon, the use of excessive force, and filing a false police report. Because of the extensive publicity surrounding the case, the trial of the four police officers was conducted in Simi Valley, a predominantly white community located in Ventura County, not far from Los Angeles. During the trial, the prosecution used the videotape as its principal source of evidence and did not have King testify. The defense also used the videotape, examining it frame by frame to bolster its contention that King was resisting arrest and that the violence was necessary to subdue him. The defense also contended that the videotape distorted the events of that night, because it did not capture what happened before and after the 81 seconds of tape recording.

On April 29, 1992, the jury, which included ten whites, one Filipino American, and one Hispanic, but no African Americans, found the four police officers not guilty on ten of the eleven counts and could not come to an agreement on the other count. The acquittals stunned many persons who had seen the videotape. Within two hours, riots erupted in the predominantly black South Central section of Los Angeles. The riots lasted 70 hours, leaving 60 people dead, more than 2,100 people injured, and between $800 million and $1 billion in damage in Los Angeles. Order was restored through the combined efforts of the police, more than 10,000 NATIONAL GUARD troops, and 3,500 Army and Marine Corps troops.

In the riot's aftermath, criticism of the Los Angeles police, which had escalated after the King beating, grew stronger. Many believed that the longtime police chief, Daryl F. Gates, had not sufficiently prepared for the possibility of civil unrest and had made poor decisions in the first hours of the riots. The view that Gates should be replaced because of the brutality charges, coupled with the determination by an independent commission headed by Warren G. Christopher (a distinguished attorney who served in the STATE DEPARTMENT during the Carter administration), placed increasing pressure on the police chief. Gates finally resigned in late June 1992.

In August 1992 a federal GRAND JURY indicted the four officers for violating King's CIVIL RIGHTS. Koon was charged with depriving King of DUE PROCESS OF LAW by failing to restrain the other officers. The other three officers were charged with violating King's right against unreasonable search and seizure because they had used unreasonable force during the arrest.

At the federal trial, which was held in Los Angeles, the jury was more racially diverse than the one at Simi Valley: Two jury members were black, one was Hispanic, and the rest were white. This time King testified about the beating and charged that the officers had used racial epithets. Observers agreed that he was an effective witness. The videotape again was the central piece of evidence for both sides. On April 17, 1993, the jury convicted officers Koon and Powell of violating King's civil rights but acquitted Wind and Briseno. Koon and Powell were sentenced to two and a half years in prison.

King filed a civil lawsuit against the police officers and the city of Los Angeles. After

settlement talks broke down, the case went to trial in early 1994. On April 19, 1994, the jury awarded King $3.8 million in COMPENSATORY DAMAGES. However, the jury refused to award King punitive damages. In July 1994, the city of Los Angeles struck a deal whereby King agreed to drop any plans to appeal the jury's VERDICT on punitive damages. In return, the city of Los Angeles agreed to expedite payment of King's compensatory damages.

Since the civil trial, King has endured some difficult times, including being arrested for drunk driving twice, as well as for assaulting his 16-year-old daughter and possession of illegal narcotics. He has been convicted of hit-and-run driving for allegedly speeding off in his car while his wife was trying to get out, and being under the influence of PCP after he crashed his car into a house. In 2007 he was shot while riding his bike, although he recovered. He checked himself into a rehabilitation clinic for alcoholism in 2008 and was later a cast member of the reality show *Celebrity Rehab with Dr. Drew*, hosted by Dr. Drew Pinsky, who ran the facility King was using.

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KING'S BENCH OR QUEEN'S BENCH

The highest common-law court in England until its end as a separate tribunal in 1875.

The Court of the King's Bench or Court of the Queen's Bench derived from the royal court first established by William the Conqueror in the eleventh century. The royal court, called the CURIA REGIS, was not a judicial body in the modern sense. Rather, it was an assembly of English lords and noblemen that resolved matters of special importance to the king. As the king traveled about England, the royal court followed, advising him and deciding cases.

The royal court was reorganized by the Crown in the twelfth and thirteenth centuries, and renamed the Court of the King's Bench or Court of the Queen's Bench. This court existed as an alternative to the Court of COMMON PLEAS, which was comprised of professional judges. At first the two courts heard different types of cases. However, over the course of several centuries, the Court of the King's Bench or Court of the Queen's Bench expanded its jurisdiction to hear virtually any case. This encroached on the power of the Court of Common Pleas, and the two courts competed for cases.

In 1873 Parliament abolished the Court of the King's Bench or Court of the Queen's Bench—then under Queen Victoria—and merged it into the High Court of Justice as the King's Bench Division. The King's Bench Division of the High Court of Justice is empowered to hear appeals of certain cases. The High Court of Justice is akin to a U.S. trial court. It has two other divisions: the Family Division and the Chancery Division.

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KISSINGER, HENRY ALFRED

As a scholar, adviser, and U.S. secretary of state, Henry Alfred Kissinger was an important figure in international affairs in the late twentieth century. The German-born Kissinger became a U.S. citizen in the 1930s; emerged as a leading theorist at Harvard in the 1950s; advised presidents during the 1960s; and defined the course of U.S. foreign policy for much of the 1970s. He won great acclaim for his pragmatic vision of foreign policy as well as for his skills as a peace negotiator. In 1973, he shared the Nobel Peace Prize for his efforts in securing a cease-fire in the VIETNAM WAR.

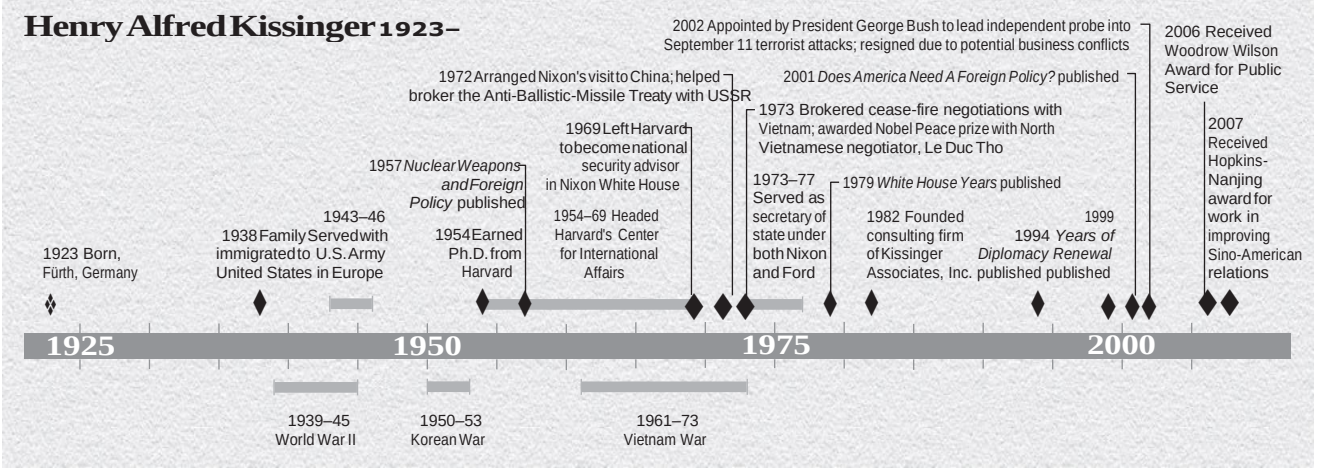
Henry Kissinger. JOE CORRIGAN/GETTY IMAGES

Born May 27, 1923, in Fürth, Germany, and given the first name Heinz, Kissinger was the son of middle-class Jewish parents who fled Nazi persecution while he was a teenager. The family immigrated to the United States in 1938, and Kissinger became a U.S. citizen in 1943. Service in the U.S. Army took Kissinger back to Europe during WORLD WAR II. Following combat and intelligence duty, he served in the post-war U.S. military government in Germany from 1945 to 1946. Decorated with honors and discharged from the service, he earned a bachelor of arts degree summa cum laude in government studies at Harvard College in 1950, then added a master's degree and, in 1954, a doctorate.

While teaching at Harvard in the 1950s, Kissinger came to national attention with his book *Nuclear Weapons and Foreign Policy* (1957). The book was a bold argument against narrow COLD WAR views of military strategy. It took aim at the reigning defense doctrine of the day, which was an all-or-nothing approach holding that the United States should retaliate massively with nuclear weapons against any aggressor. Kissinger proposed a different solution based on the approach of *Realpolitik,* the German concept of an intensely pragmatic, rather than idealistic, vision of international relations. The United States should deploy nuclear weapons strategically around the world as a deterrent, he argued, while relying on conventional, non-nuclear forces in the event of aggression against it. The idea gradually took hold over the next decade.

Kissinger viewed the Soviet Union as the chief adversary of the United States, but also as the only other superpower and, therefore, to be dealt with in a consistent and rational fashion. He helped develop the concept of détente, which allowed for the easing of relations between the United States and the U.S.S.R. and also paved the way for the opening of relations with China.

Kissinger directed the Harvard International Seminar from 1952 through 1969. Rising to the top of his field, Kissinger became a driving force



behind Harvard's efforts in the area of foreign policy. He took increasingly higher positions in the school's Center for International Affairs and directed its Defense Studies Program. Kissinger became much sought after by politicians, diplomats, and government defense specialists in the 1960s. He counseled Presidents JOHN F. KENNEDY and LYNDON B. JOHNSON on foreign policy. In 1968, he advised Governor Nelson A. Rockefeller of New York, in Rockefeller's unsuccessful campaign for the REPUBLICAN PARTY nomination for president. After the election, the new president, RICHARD M. NIXON, was quick to hire away his opponent's adviser at Rockefeller's urging.

Named first to the position of assistant for national security affairs, a high-level post, he soon eclipsed the president's secretary of state, WILLIAM P. ROGERS, in visibility and influence. Indeed, by the end of Nixon's first term, Kissinger was the acknowledged architect of U.S. foreign policy. His rise to preeminence was complete in 1973, when Nixon made him secretary of state.

Under Nixon, Kissinger had a string of historic successes. He arranged Nixon's breakthrough visit to China in 1972, which ended years of hostile relations between the two nations. Also in 1972, at the Strategic Arms Limitations Talks (SALT 1), he helped to broker the Anti-Ballistic-Missile Treaty, the landmark agreement to limit nuclear proliferation, signed by the United States and the Soviet Union.

Kissinger's approach to Vietnam was the most controversial aspect of his tenure. While attempting to turn the conduct of the war over to the South Vietnamese allies ("Vietnamization"), Kissinger is alleged to have helped plan the secret U.S. invasion and bombing of Cambodia, which resulted in the destabilization of that country. Kissinger conducted peace negotiations between the United States and Vietnam en route to the signing of a ceasefire in 1973. In recognition of his efforts, he was awarded the Nobel Peace Prize, with the chief North Vietnamese negotiator, Le Duc Tho, who refused the award.

Kissinger also engineered ceasefires between Arab states and Israel after their 1973 war, conducting what was known as *shuttle diplomacy*. He made eleven shuttle missions between Egypt, Israel, and Syria as part of his efforts to negotiate peace in the region. More contentiously, Kissinger is also alleged to have played a role in the coup against President Salvador Allende in Chile in 1973 and in the invasion of East Timor by Indonesia in 1975, although the extent of his involvement is a source of extensive disagreement, and Kissinger himself denies playing any sort of part in either event.

When Nixon's 1974 resignation resulted in the succession of GERALD R. FORD as president, Ford kept Kissinger as both secretary of state and national security adviser.

Kissinger was awarded the presidential Medal of Freedom in 1976 and the Medal of Liberty in 1986. In private life, Kissinger continued to be active in international affairs. He taught, served as a consultant, and often commented in the media on foreign policy, while also writing two popular memoirs: *White House Years* (1979) and *Years of Upheaval* (1982). President RONALD REAGAN briefly lured Kissinger back into public life in 1983, appointing him to head a commission to make policy recommendations on Latin America. In 1994 Kissinger published *Diplomacy*, which analyzed modern foreign relations, including the strategies employed during the Vietnam War, and in 2003, he published *Ending the Vietnam War: A Personal History of America's Involvement in and Extrication from the Vietnam War*.

A CONVENTIONAL ARMY LOSES IF IT DOES NOT WIN. THE GUERILLA ARMY WINS IF IT DOES NOT LOSE.
—HENRY KISSINGER

In November 2002, Kissinger was appointed by President GEORGE W. BUSH to chair the commission that had been convened to investigate the September 11, 2001 attacks on the Pentagon and the World Trade Centers. Two weeks later, Kissinger announced his resignation from the commission in order to avoid possible conflicts of interest with persons and organizations that employed his consulting firm, Kissinger Associates.

Kissinger, through his consulting firm, public appearances, and editorials continued to express opinions on U.S. foreign policy. In 2006, he was given the Woodrow Wilson Award for Public Service by the Wilson International Center, and in June 2007, he received the Hopkins-Nanjing award from the Hopkins-Nanjing Center in Nanjing, China for his role in improving Sino-American relations.

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CROSS REFERENCE

Arms Control and Disarmament.

KITING

The unlawful practice of drawing checks against a bank account containing insufficient funds to cover them, with the expectation that the necessary funds will be deposited before such checks are presented for payment.

v KLEINDIENST, RICHARD GORDON

Richard Gordon Kleindienst, a prominent Arizona lawyer and REPUBLICAN PARTY leader, served as U.S. attorney general from 1972 to 1973. He was charged in the WATERGATE scandals and ultimately pleaded guilty to a perjury charge in 1974.

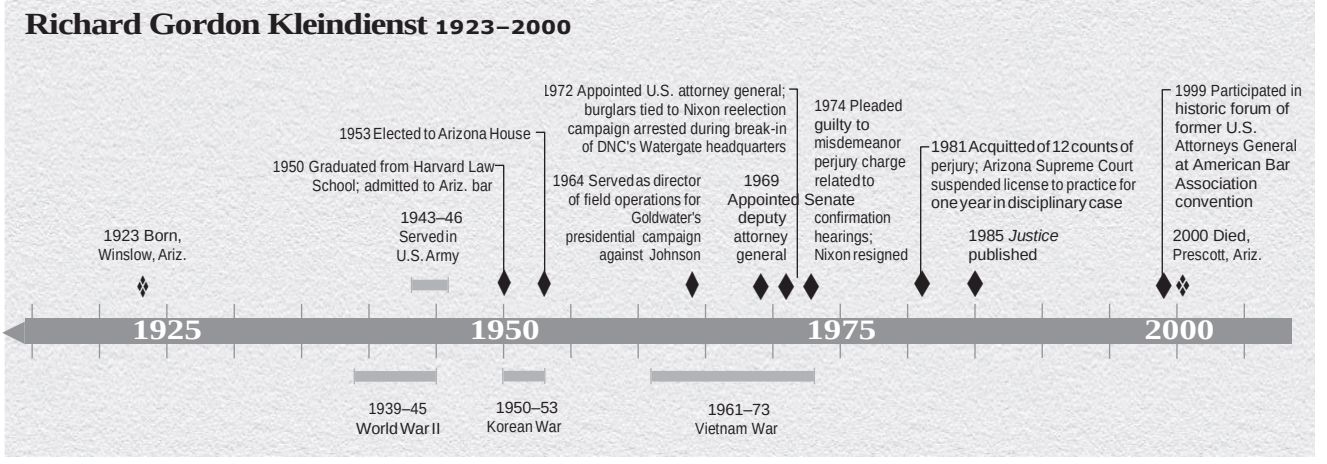
IT IS OF UTMOST IMPORTANCE TO THIS ADMINISTRATION IN POWER, AND YOU MEN MUST DO EVERYTHING YOU CAN TO INSURE THAT RESULT.
—RICHARD KLEINDIENST

Kleindienst was born August 5, 1923, in Winslow, Arizona. He served in the U.S. Army from 1943 to 1946 and then attended college. He graduated from Harvard University in 1947 and received his law degree from Harvard Law School in 1950. He was admitted to the Arizona bar in 1950 and entered practice with a law firm in Phoenix.

Politics soon became a dominant part of Kleindienst's life. He was elected as a Republican to the Arizona House of Representatives in 1953 where he served one term. During the 1950s, the western conservative wing of the Republican Party started to grow. SenatorBarry M. Goldwater, of Arizona, became the standard-bearer of conservatism, and Kleindienst devoted himself to this cause. He led the Young Republicans and served on the state and national Republican committees. He also took on the role of political mentor to WILLIAM H. REHNQUIST, a young Arizona attorney who later would become chief justice of the U.S. Supreme Court. Kleindienst's political activities climaxed in 1964, when he served as director of field operations for Goldwater's unsuccessful presidential campaign against incumbent LYNDON B. JOHNSON.

Kleindienst became an ally of RICHARD M. NIXON. He worked on Nixon's successful 1968 presidential campaign and served as general counsel of the Republican National Committee. As a reward for Kleindienst's campaign work, Nixon appointed him deputy attorney general in January 1969. Kleindienst brought to Washington, D.C., his protégé Rehnquist to serve as counsel to Attorney General JOHN N. MITCHELL.

In 1972 Mitchell agreed to resign as attorney general and to become the head of President Nixon's re-election committee. Kleindienst was appointed attorney general on June 12. At his confirmation hearings, Democratic senators raised questions about an antitrust settlement that Kleindienst had negotiated between the federal government and International Telephone and Telegraph Corporation (ITT). Rumors suggested that the White House had



pressured Kleindienst to drop the antitrust suit. The senators also alleged that ITT had received a favorable disposition of the lawsuit in return for a large contribution to Nixon's re-election campaign. At his hearings, Kleindienst denied that anyone had pressured him.

On June 17, five days after Kleindienst was sworn in as attorney general, persons working for the Nixon re-election committee broke into Democratic National Committee headquarters at the Watergate office building complex in Washington, D.C. The burglars planted electronic eavesdropping devices in hopes of gaining intelligence on the Democrats' strategy to defeat Nixon. The burglars were arrested.

On January 20, 1973, Kleindienst met with Mitchell and White House advisers to discuss handling the public-relations problems that were mounting in the wake of the break-in. As events unfolded, prosecutors began to tie the burglars to the White House and the re-election committee leadership. On April 30, Kleindienst and top White House aides H.R. Haldeman, John D. Ehrlichman, and John W. Dean III resigned, amid charges of White House efforts to obstruct justice in the Watergate case.

In 1974, Kleindienst pleaded guilty to a misdemeanor perjury charge for failing to testify fully at his Senate confirmation hearings concerning the ITT lawsuit. The charge against him revealed that Nixon had called him in 1971 and told him to drop the case. Kleindienst later claimed that he was innocent of the charge and that he had not been swayed by Nixon's directive. He was fined $1,000 and sentenced to 30 days in jail, but the judge suspended the sentence. Prosecutors also discovered that ITT had contributed $400,000 to the Nixon campaign following the resolution of the lawsuit, but Kleindienst was never implicated in that matter.

Kleindienst returned to Arizona, where he resumed his law practice. In 1985, he published *Justice,* his account of his time in Washington, D.C. He died at his home in Prescott, Arizona, on February 3, 2000.

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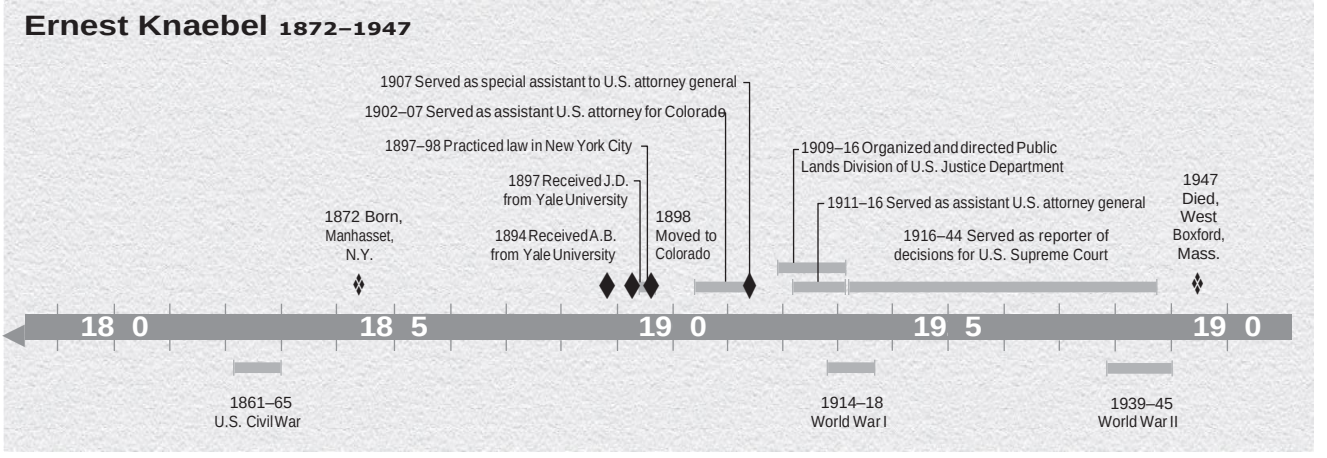
v KNAEBEL, ERNEST

Ernest Knaebel was an attorney who became an assistant U.S. attorney for Colorado and later a U.S. Supreme Court reporter of decisions.

Born June 14, 1872, in Manhasset, New York, and raised in New York, Knaebel received his college and legal education at Yale. He received his bachelor of arts degree in 1894, his bachelor of laws degree summa cum laude in 1896, and his master of laws degree magna cum laude in 1897. After graduating from law school, he was admitted to the New York, New Mexico, and Colorado bars. He practiced law in New York City from 1897 to 1898.

In 1898 Knaebel moved to Colorado and entered private practice with his father in



Denver. From 1902 to 1907 he served as assistant U.S. attorney for Colorado. He returned to the East in 1907 to become a special assistant to the attorney general in Washington, D.C., and was named assistant attorney general in 1911. During his tenure with the JUSTICE DEPARTMENT, Knaebel was heavily involved in land-fraud prosecutions, arguing many of the early cases concerning public and Indian land disputes that came before the U.S. Supreme Court. He also organized the PUBLIC LANDS Division of the Justice Department and directed that division from 1909 to 1916.

In 1916 Knaebel was appointed the reporter of decisions for the U.S. Supreme Court. In this capacity, he and his staff were responsible for the slow, painstaking task of editing the Court's decisions and preparing them for publication. The reporter checks all citations in the opinions, corrects typographical and other errors, adds the headnotes summarizing the major points of law, and lists the voting lineup of the justices and the names of counsel. Under Knaebel's tenure, the office of reporter was reorganized by statute and the printing and sale of *U.S. Reports,* the official publication of Supreme Court orders and decisions, was turned over to the U.S. GOVERNMENT PRINTING OFFICE and the superintendent of documents. Knaebel edited volumes 242 to 321 of *U.S. Reports.*

Knaebel was a member of the AMERICAN BAR ASSOCIATION, Phi Beta Kappa, and Phi Alpha Delta. He served on the Board of Governors of the Lawyers' Club and was a member of the Cosmos Club and the Yale Club.

Knaebel served as reporter of decisions from 1916 until January 31, 1944, when he retired because of ill health. He died on February 19, 1947, in West Boxford, Massachusetts.

KNOW-NOTHING PARTY

The Know-Nothing movement was actually a group of secret anti-Catholic, anti-Jewish and anti-immigrant political organizations that called itself the American party. The movement, composed principally of native-born, white, Anglo-Saxon males, came into being in the 1850s, grew rapidly, and waned almost as quickly.

In the early 1800s, as immigrants continued to flow into the United States, a number of American citizens grew increasingly alarmed. Waves of Germans, who mostly spoke in their native tongue, and Irish, whose thick brogues were difficult to understand, were two groups who inspired the great opposition. The clannish Irish, who were Catholics, were particularly feared and despised. Many Protestants felt that all Catholics were controlled by and took orders from the pope in Rome.

Certain groups of already established Americans who called themselves "Nativists," formed secret societies dedicated to stopping the flow of immigrants. The depth of nativist animosity was demonstrated in 1834 when a group of anti-Catholic laborers and townspeople chased a group of students and Ursuline nuns from their school and convent near Boston and then burned the buildings.

In 1835 a group of New Yorkers organized a state political party, the Native American Democratic Association. Association candidates, running on a platform that opposed Catholics and immigrants, with support from the Whigs (members of a political party formed in 1834 to oppose ANDREW JACKSON and the Democrats) gained 40 percent of the vote in the fall elections. In the 1840s more groups appeared in Baltimore, Philadelphia, and other metropolitan regions of the country. Various local groups appeared and disappeared over time. Eventually the themes of hostility to Catholics and immigrants and the corresponding opposition to the costs of trying to support and educate indigent foreigners found favor with groups attempting to organize on a national basis.

In 1849 a secret fraternal organization bearing the name of the Order of the Star Spangled Banner was launched in New York and similar lodges began to form in other major American cities. When asked about their nativist origins, members would respond that they "knew nothing" and soon found themselves so-labeled. Secretive at first, the organization soon found support for proposals that included stringent restrictions on IMMIGRATION, exclusion of foreign-born persons from voting or holding political office and a residency requirement of more than 20 years for U.S. citizenship. Because many Know-Nothing supporters felt that liquor had a pernicious effect on immigrants, they sought to limit alcohol sales. They also supported daily Bible readings in schools and tried to ensure that only Protestants could teach in the public schools.

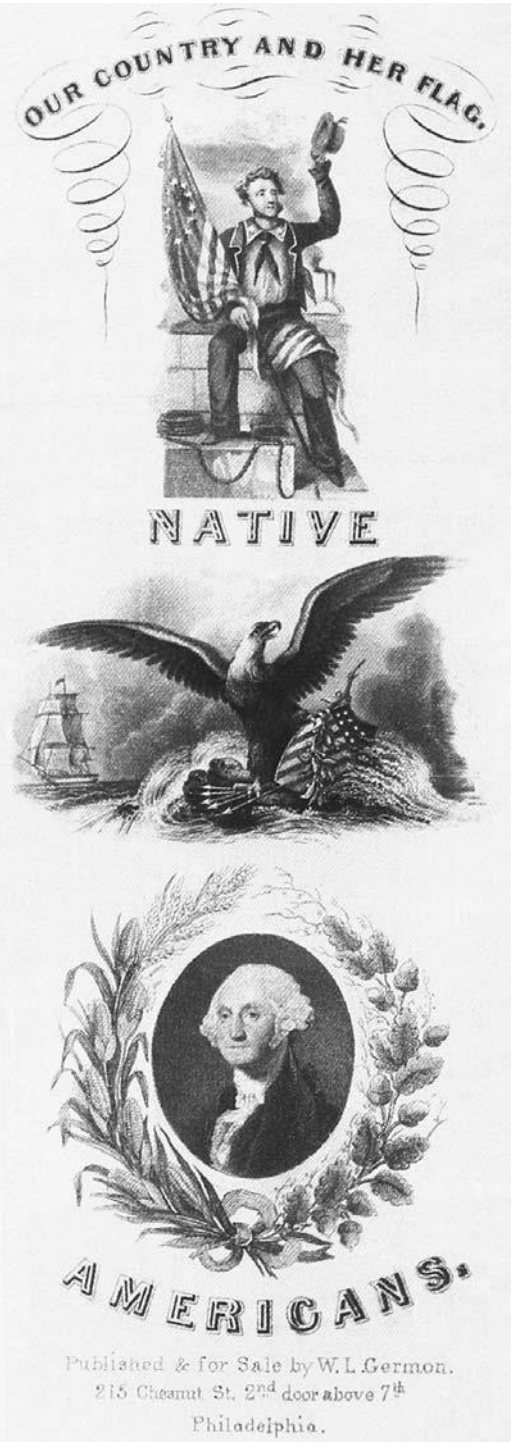
As it shed its clandestine beginnings, the Know-Nothing movement spread rapidly. By

1852 supporters of the Know-Nothing movement had achieved significant results with many of their candidates winning seats in local and state elections. With the passage of the KANSAS-NEBRASKA ACT of 1854, the movement gained more supporters. Although originally allied with the Whigs, the phenomenal success of the Know-Nothings as well as growing debate over SLAVERY helped cause the decline and demise of the WHIG PARTY. The Know-Nothings elected the governor and all but two members of the Massachusetts state legislature as well as 40 members of the New York state legislature. By 1855 Know-Nothing adherents had elected thousands of local government officials as well as eight governors. Forty-three Know-Nothing candidates were elected to the U.S. House of Representatives and there were five Know-Nothing senators.

Yet even as the number of Know-Nothing adherents reached its peak, the movement was beginning to decline. Despite their numbers in elective office, the Know-Nothings were largely unsuccessful in passing significant legislation. They introduced a bill in Congress that called for the prohibition of immigration of foreign-born paupers and convicts. They also introduced legislation in several states that required registration and literacy tests for voters.

In 1856 the Know-Nothings held their first and only national convention in Philadelphia where, as the American party, they supported former President MILLARD FILLMORE as their presidential candidate. The meeting illustrated the growing divide between antislavery and proslavery factions within the party when a group of antislavery delegates abruptly left the convention. Fillmore received 21 percent of the popular vote and eight electoral votes, finishing a poor third behind Democrat JAMES BUCHANAN (who had been nominated instead of unpopular incumbent FRANKLIN PIERCE and who won the election) and Republican John Fremont.

The dismal showing of Fillmore and the increasing controversy over slavery continued the rapid disintegration of the Know-Nothing movement. Many antislavery adherents joined remnants of the Whigs in the newly emerging REPUBLICAN PARTY, while proslavery supporters joined the DEMOCRATIC PARTY. By 1859 the Know-Nothing movement had lost support in all but a few Northern and border states and was no longer of any significance on the national stage.



An 1844 "Nativist" campaign banner. By 1856. the anti-immigrant, anti-Catholic political group—then known as the American party (or Know-Nothings)—held their only national convention in Philadelphia, nominating Millard Fillmore for president.

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KNOWINGLY

Consciously; willfully; subject to complete understanding of the facts or circumstances.

According to provisions contained in the MODEL PENAL CODE, an individual is deemed to have acted knowingly in regard to a material element of an offense when: in the event that such element involves the nature of his or her conduct or the circumstances attendant thereto, he or she is aware that the conduct is of such nature or that those circumstances exist; if the element relates to a result of the person's conduct, he or she is conscious of the fact that it is substantially certain that the conduct will precipitate such a result.

When the term *knowingly* is used in an indictment, it signifies that the defendant knew what he or she was going to do and, subject to such knowledge, engaged in the act for which he or she was charged.

v KNOX, PHILANDER CHASE

Philander Chase Knox was a corporate attorney, industrialist, and two-time U.S. senator from Pennsylvania. He served as U.S. attorney general under President WILLIAM MCKINLEY from 1901 to 1904, and as U.S. secretary of state under President WILLIAM HOWARD TAFT from 1909 to 1913.

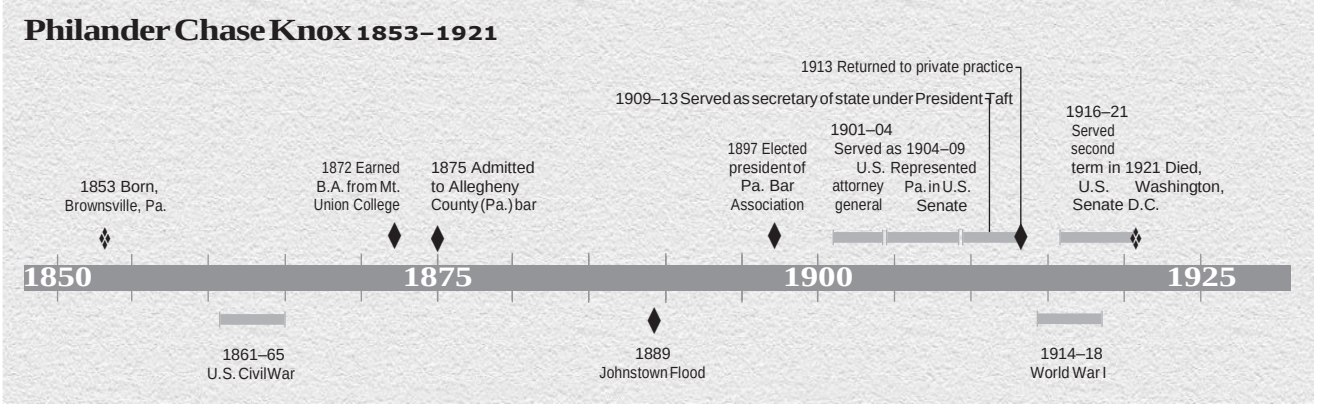
Knox was born to privilege on May 6, 1853, in Brownsville, Fayette County, Pennsylvania. His banker father, David S. Knox, financed commercial activities in the region around Pittsburgh. His mother, Rebekah Page Knox, was involved in numerous philanthropic and social organizations, and she encouraged her children in COMMUNITY SERVICE pursuits.

Knox's early education was in local private schools with the children of other prominent Pennsylvania families. He received a bachelor of arts degree from Mount Union College, in Alliance, Ohio, in 1872. While in college Knox began a lifelong friendship with future president McKinley, who was then district attorney of Stark County, Ohio. McKinley encouraged the young man's interest in the law, and arranged for him to read law in the office of Attorney H. B. Swope, of Pittsburgh.

After spending three years with Swope, Knox was admitted to Pennsylvania's Allegheny County bar in 1875. Shortly thereafter he was appointed assistant U.S. district attorney for the Western District of Pennsylvania. Two years later he formed a law partnership with James H. Reed, of Pittsburgh, that would last more than 20 years. In 1880 he formed an equally lasting marital partnership with Lillie Smith, daughter of Pittsburgh businessman Andrew D. Smith.

Knox's professional skills and personal style were well suited to the business climate of his day. He was intimately involved in the industrial development of the Pittsburgh region as well as the organization and direction of the companies forging that development. His efforts made him one of the wealthiest men in Pennsylvania.

Knox, along with many of his business and social peers, was a charter member of the South



Fork Fishing and Hunting Club, on Lake Conemaugh, near Johnstown, Pennsylvania. The club erected a dam to create its private lake retreat. When the dam failed on May 31, 1889, an ensuing flood killed more than 2,000 people and destroyed countless homes and businesses in its path. Author David McCullough noted in his history *The Johnstown Flood* that no money was ever collected from the club or its members through damage suits. But Knox's family contributed to the relief efforts, and Knox and other businessmen used their resources to help rebuild many of the companies and restore many of the jobs lost in the cataclysm.

By 1897 Knox had sufficiently redeemed himself to be elected president of the Pennsylvania BAR ASSOCIATION. In 1899 his longtime friend President McKinley offered him the position of attorney general of the United States. Knox declined McKinley's initial offer because he was heavily involved in the formation and organization of the Carnegie Steel Company, so the position went to JOHN W. GRIGGS.

When Griggs resigned in 1901, McKinley again offered the position to Knox. This time Knox accepted. He began his term on April 9, 1901. Within the year he brought an antitrust action against the Northern SECURITIES Company, through which James J. Hill, John Pierpont Morgan, and others had attempted to merge the Great Northern, the Northern Pacific, and the Chicago, Burlington, and Quincy railroads. Knox guided the litigation through several appeals and made the winning argument before the U.S. Supreme Court (*Northern Securities Co. v. United States,* 193 U.S. 197, 24 S. Ct. 436, 48 L. Ed. 679 [1904]).

Later in 1901 he ruled against executive authority—and his own preferences—when he advised that game refuges in the national forests could be established only through legislation. He told President McKinley that he regretted having to make that decision: "I would be glad to find authority for the intervention by the Secretary [of Interior] for the preservation of what is left of the game … but it would seem that whatever is done in that direction must be done by Congress, which alone has the power" (Baker 1992, 405).

Knox stayed on as attorney general under President THEODORE ROOSEVELT. In 1902 he traveled to Paris to examine the title to a canal concession across the Isthmus of Panama. Knox validated a French company's questionable title (in a 300-page opinion) and opened the way for the United States to purchase the company's interests. The incident is often cited as an example of the law being manipulated by presidential prerogative. Knox reportedly said afterward that Roosevelt's plan to acquire the canal concession was not marred by the slightest taint of legality.

Philander Chase Knox.
LIBRARY OF CONGRESS

THE CONSCIOUSNESS OF POSSESSING A GIANT'S STRENGTH IS A SUFFICIENT PREVENTIVE AGAINST THE TYRANNY OF USING IT AS A GIANT.
—PHILANDER KNOX

His service as attorney general ended June 10, 1904, when Governor Samuel W. Pennypacker, of Pennsylvania, appointed him to fill the vacancy caused by the death of Senator Matthew S. Quay. Knox took Quay's seat in the U.S. Senate July 1, 1904, and was subsequently elected to a full six-year term. During his term he was active and influential, especially in railroad rate legislation. He served on the Judiciary Committee, took a prominent part in a debate over tolls for the Panama Canal, and for a time was chairman of the Senate committee on rules.

He resigned his Senate seat March 4, 1909, to accept President Taft's appointment as secretary of state. Under Taft the focus of foreign policy was the encouragement and

protection of U.S. investments abroad. Taft's approach, often called dollar diplomacy, was first applied in 1909, in a failed attempt to help China assume ownership of the Manchurian railways. Tangible proof of Knox's efforts in this attempt can be seen today in Washington, D.C.: The Chinese government gave him 2,000 cherry trees that still blossom each spring. More successful attempts at dollar diplomacy were eventually made in Nicaragua and the Caribbean.

In March 1913 Knox returned to the practice of law. He did not last long. Just three years later, he announced his intention to seek a second term in the U.S. Senate. He was elected November 6, 1916. He was an outspoken opponent of the LEAGUE OF NATIONS, and he took a leading role in the successful fight against the ratification of the TREATY OF VERSAILLES at the close of WORLD WAR I because, he said, it imposed "obligations upon the United States which under our CONSTITUTION cannot be imposed by the treaty-making power."

On October 12, 1921, Knox collapsed and died outside his Senate chamber in Washington, D.C. He was 68 years old. He was buried near his home at Valley Forge, Pennsylvania.

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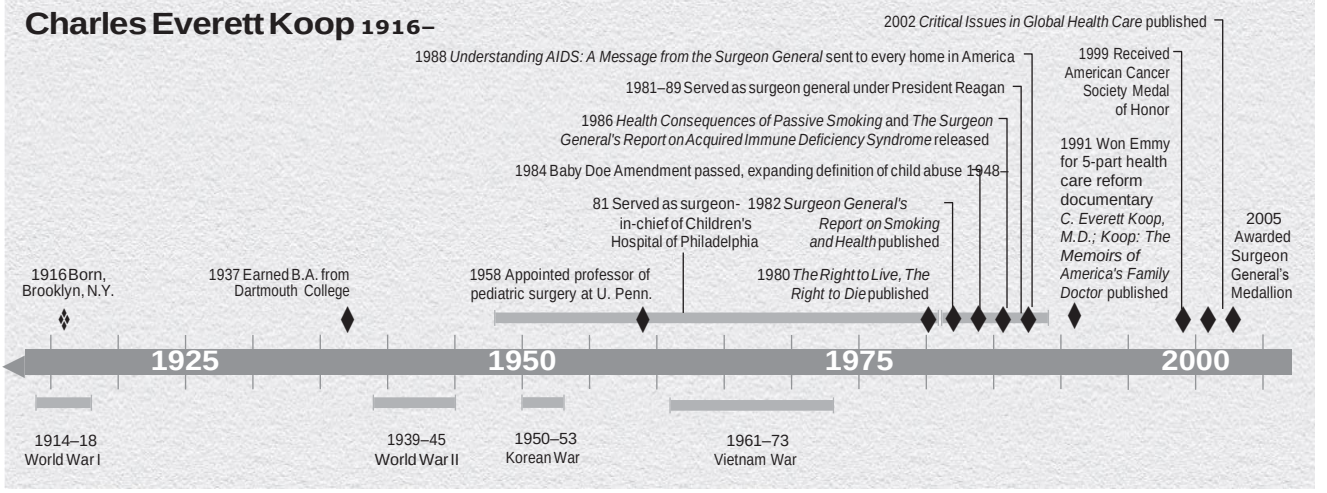
v KOOP, CHARLES EVERETT

Dr. CHARLES EVERETT KOOP, SURGEON GENERAL under President RONALD REAGAN, boldly led the United States on controversial health issues such as smoking, ABORTION, infanticide, and ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS). Koop was a driven, dedicated public servant, committed to doing what he felt was best for the health of the American people. He aggressively confronted pressing health issues while dodging the political machinery of Washington, D.C. During his eight-year tenure, Koop increased the influence and authority of his post with the PUBLIC HEALTH SERVICE. With a passion for medicine and a sincere interest in promoting the public's health, Koop was affectionately regarded as "America's family doctor."

Koop was born October 14, 1916, in Brooklyn, the only surviving child of John Everett Koop and Helen Apel Koop. As a young pupil, he excelled academically and socially, participating in football, baseball, basketball, and wrestling. One month before his 17th birthday, Koop entered Dartmouth College. The Dartmouth coaches quickly recognized Koop's talent at football and awarded him the coveted position of quarterback. However, after a severe concussion damaged his vision and threatened the surgical career that he had envisioned as a young man, Koop quit the team. He immersed himself in pre-med studies, majoring in zoology. Having lost his football



scholarship, Koop took a series of odd jobs to finance his way through college.

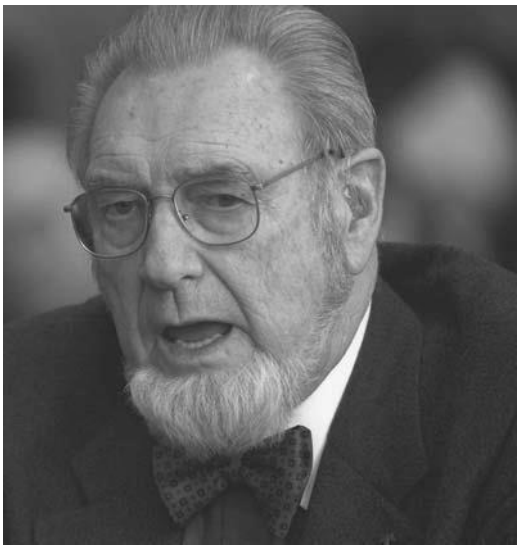
Koop entered medical school at Cornell University in the fall of 1937. In 1938, he married Elizabeth ("Betty") Flanagan, with whom he eventually raised four children. When the United States entered WORLD WAR II, and many physicians were called to duty, Koop performed many surgeries that, under normal circumstances, would have been assigned to more senior physicians.

For his next phase of training, Koop and his family moved to Philadelphia. There, he took an internship at Pennsylvania Hospital, followed by a residency at University of Pennsylvania Hospital. After residency, in 1948, Koop became surgeon-in-chief of Children's Hospital of Philadelphia.

During his more than 30 years at Children's Hospital, Koop helped establish pediatric surgery as a medical specialty. At the time he took the job, many surgeons were reluctant to operate on infants and small children because of the risks associated with sedating them. Koop devised anesthetic techniques for his young patients and worked tirelessly to perfect surgical procedures and post-operative care for children. Along with being a skilled surgeon, he was a compassionate doctor. He was sensitive to the parents of sick and dying children and helped to create support groups to meet their needs.

Koop's work with pre-term and malformed babies at Children's Hospital influenced his strong positions against abortion, infanticide, and EUTHANASIA. While at Children's Hospital, Koop wrote *The Right to Live, the Right to Die* (1980), a bestseller that outlined the relationship among those three practices. He quickly became a spokesman on these issues and committed a great deal of his time to trying to rouse the American conscience. Later, after he was nominated to be surgeon general, Koop was surprised to learn that his Republican supporters valued him more for his stance against abortion than for his impressive medical career.

In 1980, with retirement just one year away, Koop accepted the invitation to become the surgeon general in Reagan's new administration. The surgeon general is an officer in the United States Public Health Service Commissioned Corps, a uniformed, mobile health unit. Under the leadership of the secretary of Health and Human Services, the surgeon general administers health policies and supervises personnel in the field. During his time in office, Koop broadened the surgeon general's role from low-profile administrator to high-profile leader.



C. Everett Koop.
AP IMAGES

Koop's surgeon general's reports and frequent testimony influenced the passage of numerous health-related mandates. He became a household name as he gently, yet firmly, informed the American public about the most preventable threats to their health. Regardless of the political consequences, Koop believed that he was obligated to provide accurate information to the public.

Koop launched an antismoking campaign with the 1982 *Surgeon General's Report on Smoking and Health.* In that DOCUMENT, he clearly stated the relationship between cancer deaths and smoking. In the years that followed, Koop produced reports that linked smoking to cardiovascular disease and to chronic obstructive lung disease.

In an anti-tobacco campaign, Koop targeted smokeless tobacco products, such as chewing tobacco and snuff, citing their connections to various cancers. His actions spurred the passage of the Comprehensive Smokeless Tobacco Health Education Act of 1986, 15 U.S.C.A. §§ 4401 et seq., a mandate to educate the public about this health threat. At Koop's urging, Congress legislated warning labels for smokeless tobacco products.

Koop examined the effects of smoking on nonsmokers in his 1986 report *Health*

Consequences of Passive Smoking. Legislators across the nation responded to his report by creating laws to restrict smoking and to reduce the risk of passive smoking to nonsmokers. By 1987 smoking was banned in all federal buildings and regulated in restaurants, hospitals, and other public places in over 40 states. In 1988 Koop commissioned studies on smoke in airplanes. Congress reacted to the results of these studies by banning smoking on all flights lasting less than six hours.

Koop publicized the addictive nature of tobacco in his 1988 surgeon general's report. This report forced tobacco officials to agree to more specific surgeon general's labels on cigarettes. However, Koop lost the fight for labels that would have identified nicotine as an addictive substance.

YOU WOULD HAVE TO LABEL ME A CONSERVATIVE, BUT I'M A FLEXIBLE CONSERVATIVE. WE HAD NEVER, AS A MEDICAL PROFESSION, DEALT WITH PEOPLE WHEN THEY WERE SICK ON THE BASIS OF HOW THEY GOT SICK.
—C. EVERETT KOOP

Although Koop was known for his anti-abortion stance, he did little on this issue during his time as surgeon general. He viewed abortion as a moral issue, not a political one, and he strongly disagreed with those who wanted to ban contraceptives and abortion. In response to Koop's position on contraception and sex education, many conservatives who at first had supported him turned against him.

Koop faced a dilemma when President Reagan asked him to study the psychological effects of abortion on women. In Koop's opinion, it was a poor strategy to quibble about the effects of abortion on the mother when the effects on the fetus were conclusive. In addition, because both sides of the abortion controversy produced biased studies, the available research was useless. In the end, Koop could not gather evidence to assert conclusively or to refute damaging psychological effects of abortion on the mother. He never completed the report.

In 1982 the *Baby Doe* case alarmed the nation. Baby Doe was born with Down syndrome, which results in mental retardation and other physical problems, as well esophageal atresia, an obstruction in the food passageway. Down syndrome is not correctable but is compatible with life; the esophageal atresia is incompatible with life but is correctable. On the advice of their obstetrician, the parents chose to forgo treatment, and the baby died. Koop believed that the child was denied treatment because he was retarded, not because the surgery was risky. Koop himself had performed this kind of surgery successfully many times. Judging this to be a case of CHILD ABUSE and infanticide, Koop commented publicly that it is imperative to choose life, even when the quality of that life is not perfect.

In 1983 the nation grappled with similar difficult circumstances surrounding the *Baby Jane Doe* case. Baby Jane Doe was born with spina bifida (a defect in the lower back), an abnormally small head, and hydroencephaly (a condition that causes fluid to collect in the brain). At issue was the baby's right to medical treatment to increase her quality of life, despite her physical handicaps. Koop believed that without medical treatment, Baby Jane Doe's spine would become infected, that the infection would spread to her brain, and that she would become severely retarded. He, therefore, advocated medical treatment for that condition.

Koop's efforts to educate Congress and the public about the medical injustices affecting handicapped children led to the Baby Doe Amendment (42 U.S.C.A. §§ 5101, 5102, 5103). On October 9, 1984, the amendment extended the laws defining child abuse to include the withholding of fluids, food, and medically indicated treatment from disabled children.

While in office, Koop became embroiled in the politics of educating the public about the growing health threat of AIDS. The Reagan administration prohibited Koop from speaking on the topic for nearly five years. This constraint distressed Koop, who believed that it was the surgeon general's duty to inform the public about all health issues. Despite the Reagan administration's silence on the issue, on October 22, 1986, Koop released *The Surgeon General's Report on Acquired Immune Deficiency Syndrome.* In it, he clearly stated the facts about the transmission of the disease and identified preventive measures and high-risk behaviors.

Koop was adamant that all U.S. citizens obtain the information that they needed in order to stop the spread of AIDS. In May 1988 he sent the mailer *Understanding AIDS: A Message from the Surgeon General* to every household in the United States.

When AIDS first attracted attention, it was labeled a homosexual disease because it was transmitted predominantly through sexual contact among gay males. Koop lost the support of staunch conservatives because he refused to use his position to publicly condemn homosexual

behavior. Koop's focus was to educate and to save lives. Although he advocated abstinence as the best method for preventing the transmission of AIDS, he also urged the use of condoms by those who continued to engage in risky sexual behavior. Koop spoke against proposals such as mandatory testing and the detention of HIV-positive homosexuals. He challenged those who opposed the use of tax dollars to fund AIDS research. His reasoned approach to the AIDS epidemic helped to calm the hysteria of the public.

Shortly after GEORGE H. W. BUSH became president, Koop expressed interest in the position of secretary of Health and Human Services. Bush chose Dr. Louis W. Sullivan for that job.

Koop resigned from his position as surgeon general at the end of his second term. He wanted new challenges and looked forward to educating the public without the interference of Washington politics. Ironically, Koop's popularity had undergone a complete reversal during his term in office: Koop had entered his post on the shoulders of conservative Christians, and he was leaving it as a hero of the liberal press and public.

Even in retirement, Koop continued to fulfill his role as public-health educator. He established the Koop Foundation and the C. Everett Koop Institute at Dartmouth. The Koop Foundation is a private, nonprofit organization dedicated to fitness, education, and research initiatives to promote the health of U.S. citizens. The Koop Institute actively works for reform in medical education and the delivery of medical care. To that end, the institute provides a health-information network to help doctors address challenging medical cases. By writing, speaking, and consulting on health issues, the diligent Koop continued to champion the cause of better and more accessible health care.

Koop received numerous awards for his many lifetime achievements. In 1995 President BILL CLINTON awarded Koop the Presidential Medal of Freedom, the nation's highest civilian award. In January 2005 Koop was honored with the Surgeon General's Medallion, which is the highest award that the surgeon general can give to a civilian. Koop was given the award for his lifelong dedication to issues of public health and his commitment to improving the health and wellbeing of Americans.

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KOREAN WAR

The Korean War was a conflict fought on the Korean Peninsula from June 1950 to July 1953. Initially the war was between South Korea (Republic of Korea) and North Korea (Democratic People's Republic of Korea), but it soon developed into an international war involving the United States and 19 other nations. The United States sent troops to South Korea as part of a UNITED NATIONS "police action," which sought to repel the Communist aggression of North Korea. Before the war ended in a stalemate, the People's Republic of China had intervened militarily on the side of North Korea, and the Soviet Union had supplied military equipment to the North.

At the end of WORLD WAR II, in 1945, the Soviet Union occupied the Korean Peninsula north of the 38th degree of latitude, while the U.S. occupied the territory south of it. In 1947, after the United States and the Soviet Union failed to negotiate a reunification of the two separate Korean states, the United States asked the U.N. to solve the problem. The Soviet Union, however, refused a U.N. proposal for a general election in the two Koreas to resolve the issue and encouraged the establishment of a Communist regime under the leadership of Kim Il-sung. South Korea then established a democratic government under the leadership of Syngman Rhee. By 1949 most Soviet and U.S. troops had been withdrawn from the Korean Peninsula.

On June 25, 1950, North Korea, with the tacit approval of the Soviet Union, launched an attack across the 38th parallel. The U.N. Security Council passed a resolution calling for the assistance of all U.N. members to stop the invasion. Normally, the Soviet Union would have vetoed this resolution, but it was

A convoy of U.S. Army trucks cross the 38th parallel during the Korean War. The parallel marks the dividing line between North and South Korea.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

boycotting the Security Council in protest of the U.N.'s decision not to admit the People's Republic of China.

Sixteen nations joined the U.N. forces, including the United States. President HARRY S. TRUMAN immediately responded by ordering U.S. forces to assist South Korea. Truman did so without a declaration of war, which until that time had been a prerequisite for U.S. military involvement overseas. Though some Americans criticized Truman for this decision, generally the country supported his action as part of his strategy of "containment," which sought to prevent the spread of COMMUNISM beyond its current borders. Korea became the test case for containment.

The North Korean forces crushed the South Korean army, with the South Koreans holding just the southeastern part of the peninsula. U.N. forces, under the command of General Douglas MacArthur, stabilized the front. On September 15, 1950, MacArthur made a bold amphibious landing at Inchon, about 100 miles below the 38th parallel, cutting off the North Korean forces. The North Korean army was quickly defeated, and more than 125,000 soldiers were captured.

MacArthur then sent U.N. forces into North Korea, proclaiming, on November 24, that the troops would be home by Christmas. As U.N. forces neared the Yalu River, which is the border between North Korea and Manchuria, the northeast part of China, the Chinese army attacked them with 180,000 troops. The entrance of China changed the balance of forces. U.S. troops took heavy casualties during the winter of 1950–51 as the Chinese army pushed the U.N. forces back across the 38th parallel and proceeded south. U.N. forces finally halted the offensive south of Seoul, the capital of South Korea. A U.N. counteroffensive in February 1951 forced the Chinese to withdraw from South Korea. By the end of April, U.N. forces occupied positions slightly north of the 38th parallel.

It was during this period that President Truman became concerned about the actions of MacArthur. The general publicly expressed his desire to attack Manchuria, blockade the Chinese coast, and reinforce U.N. forces with troops from Nationalist China, with the goal of achieving victory. Truman, however, favored a limited war, fearing that MacArthur's course would bring the Soviet Union into the war against the United States. When MacArthur continued to make his views known, Truman, as commander in chief, relieved the general of his command on April 11, 1951. The "firing" of MacArthur touched off a firestorm of criticism by Congress and the public against Truman and his apparent unwillingness to win the war. Nevertheless, Truman maintained the limited war strategy, which resulted in a deadlock along the 38th parallel.

In June 1951 the Soviet Union proposed that cease-fire discussions begin, and in July the representatives of the U.N. and Communist commands began truce negotiations at Kaesong, North Korea. These negotiations were later moved to P'anmunjom.

The Korean War affected U.S. domestic policy. In April 1952 President Truman sparked a constitutional crisis when he seized the U.S. steel industry. With a labor strike by the steelworkers' union imminent, Truman was concerned that the loss of steel production would hurt the Korean War effort. He ordered Secretary of Commerce Charles Sawyer to seize the steel mills and maintain full production. The steel industry challenged the order, bringing it before the Supreme Court. In Youngstown Sheet and Tube CO. v. Sawyer, 343 U.S. 579, 72 S. Ct. 863, 96 L. Ed. 1153 (1952), the Court refused to allow the government to seize and operate the steel mills. The majority rejected Truman's claim of inherent executive

power in the CONSTITUTION to protect the public interest in times of crisis.

Truman's popularity declined because of the war, which contributed to his decision not to run for reelection in 1952. In the presidential race, Republican DWIGHT D. EISENHOWER easily defeated Democrat ADLAI STEVENSON. Eisenhower, a former U.S. Army general and World War II hero, pledged to end the war. The truce negotiations, which broke off in October 1952, were resumed in April 1953. After Eisenhower hinted that he was prepared to use nuclear weapons if a settlement was not reached, an armistice was signed on July 27, 1953.

More than 33,000 U.S. soldiers died in the conflict, and 415,000 South Korean soldiers were killed. It is estimated that 2,000,000 North Koreans and Chinese died. The United States has maintained a military presence in South Korea since the end of the war, because North Korea and South Korea have remained hostile neighbors.

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KOREMATSU V. UNITED STATES

Korematsu v. United States, 323 U.S. 214, 65 S. Ct. 193, 89 L. Ed. 194 (1944), was a controversial 6–3 decision of the Supreme Court that affirmed the conviction of a Japanese American citizen who violated an exclusion order that barred all persons of Japanese ancestry from designated military areas during WORLD WAR II.

Fred Toyosaburo Korematsu, an American citizen of Japanese descent, was convicted in federal court for remaining in a designated military area in California contrary to a Civilian Exclusion Order issued by an army general that required persons of Japanese ancestry to report to assembly centers as a prelude to mass removal from the West Coast. He unsuccessfully appealed his conviction to the CIRCUIT COURT of appeals and was granted *certiorari* by the Supreme Court.

Fred Korematsu receives the Presidential Medal of Freedom from President Clinton on January 15, 1998.

AP IMAGES

The order that Korematsu was convicted of violating was based upon an EXECUTIVE ORDER, which authorized the military commander to establish military zones and impose restrictions on activities or order exclusion from those areas in order to protect against ESPIONAGE and sabotage. Federal law made violation of these orders a crime. The entire West Coast and southern Arizona were designated as military zones. The restriction and exclusion orders applied to all enemy aliens and additionally to American citizens of Japanese ancestry. Pursuant to the executive order, another order imposed an 8 P.M. to 6 A.M. curfew on all persons of Japanese ancestry in designated West Coast military areas. This order and a

conviction based on it was challenged in *Hirabayashi v. United States,* 320 U.S. 81, 63 S. Ct. 1375, 87 L.Ed. 1774 (1943), but the Supreme Court upheld the order as "'protection against espionage and against sabotage'" and sustained the conviction. The Court relied upon that case as support for its refusal to rule that Congress and the president exceeded their war powers in excluding persons of Japanese descent from the West Coast in *Korematsu.* Although it acknowledged that being prohibited from the area where one's home is located is a more severe hardship than a ten-hour curfew, the Court accepted the claims of the government that such drastic measures were necessary to adequately protect the country.

At the start of the majority opinion, the Court stated that any legal restriction that infringes upon the CIVIL RIGHTS of a particular race is "immediately suspect." However, it continued, not all restrictions are unconstitutional. Such limitations are valid when dictated by public necessity, but they must withstand rigid judicial scrutiny in order to be upheld. The restrictions imposed upon Japanese Americans were deemed by the Court to be necessary for public security during time of war.

Korematsu argued that the rationale of the Court in *Hirabayashi* was erroneous and that when the order in question was promulgated there was no longer any danger of a Japanese invasion of the West Coast. The Court rejected these arguments. Both the curfew and exclusion orders were necessary, because disloyal Americans of Japanese origin could not be easily segregated until subsequent investigations took place. Although the hardship of exclusion fell upon many loyal people, the Court viewed it as one of the harsh results of modern warfare.

The Court affirmed Korematsu's conviction, which has been cited by constitutional scholars as the foundation of the strict scrutiny test that is applied to suspect classifications made by the government.

In 1983, upon a challenge by Korematsu who was represented by the AMERICAN CIVIL LIBERTIES UNION and the Japanese American Citizens League, U.S. district court judge Marilyn Hall Patel vacated the 40-year-old conviction. Based upon newly discovered evidence—previously withheld government documents—the judge found that the new evidence demonstrated "that the Government knowingly withheld information from the Courts when they were considering the critical question of military necessity in this case." The judge added that "justices of [the Supreme] Court and legal scholars have commented that the [Korematsu] decision is an anachronism in upholding overt racial discrimination as 'compellingly justified,' and that the Korematsu case lies overruled in the court of history."

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Japanese American Evacuation Cases.

KU KLUX KLAN

The Ku Klux Klan (KKK) is a white supremacist organization that was founded in 1866. Throughout its notorious history, factions of the secret fraternal organization have used acts of terrorism—including MURDER, LYNCHING, arson, RAPE, and bombing—to oppose the granting of CIVIL RIGHTS to African Americans. Deriving its membership from native-born, white Protestant U.S. citizens, the KKK has also been anti-Semitic and anti-Catholic and has opposed the IMMIGRATION of all those it does not view as "racially pure." Other names for the group have been White Brotherhood, Heroes of America, Constitutional Union Guards, and Invisible Empire.

Origins and Initial Growth

Ex-Confederate soldiers established the Ku Klux Klan in Pulaski, Tennessee, in 1866. They developed the first two words of the group's name from the Greek word *kuklos,* meaning "group or band," and took the third as a variant of the word *clan.* Starting as a largely recreational group, the Klan soon turned to intimidating newly freed African Americans. Riding at night, the Klan terrorized and sometimes murdered those it opposed. Members adopted a hooded white costume—a guise intended to represent the ghosts of the Confederate dead—to avoid identification and to frighten victims during nighttime raids.

The Klan fed off the post-Civil War resentments of white southerners—resentment that centered on the RECONSTRUCTION programs imposed on the South by a Republican Congress. Under Reconstruction, the North sought to restructure southern society on the basis of racial equality. Under this new regime, leading southern whites were disfranchised, whereas inexperienced African Americans,

carpetbaggers (northerners who had migrated to the South following the war), and scalawags (southerners who cooperated with the North) occupied major political offices.

Shortly after the KKK's formation, Nathan Bedford Forrest, a former slave trader and Confederate general, assumed control of the organization and turned it into a militaristic, hierarchical entity. In 1868 Forrest formally disbanded the group after he became appalled by its growing violence. However, the KKK continued to grow, and its atrocities worsened. Drawing the core of its membership from ex-Confederate soldiers, the KKK may have numbered several hundred thousand at its height during Reconstruction.

In 1871 the federal government took a series of steps to counter the KKK and its violence. Congress organized a joint select committee made up of seven senators and 14 representatives to look into the Klan and its activities. It then passed the Civil Rights Act of 1871, frequently referred to as the Ku Klux Klan Act, which made night-riding a crime and empowered the president to order the use of federal troops to put down conspirators by force. The law also provided criminal and civil penalties for people convicted of private conspiracies—such as those perpetrated by the KKK—intended to deny others their civil rights.

Also in 1871, President ULYSSES S. GRANT relocated troops from the Indian wars on the western plains to South Carolina, in order to quell Klan violence. In October and November of that year, the federal CIRCUIT COURT for the District of South Carolina held a series of trials of KKK members suspected of having engaged in criminal conspiracies, but the trials resulted in few convictions.

The Klan declined in influence as the 1870s wore on. Arrests, combined with the return of southern whites to political dominance in the South, diminished its activity and influence.

Resurgence

The KKK experienced a resurgence after WORLD WAR I, reaching a peak of 3 or 4 million members in the 1920s. David W. Griffith's 1915 movie *The Birth of a Nation,* based on Thomas Dixon's 1905 novel *The Clansman,* served as the spark for this revival. The movie depicted the Klan as a heroic force defending the "Aryan birthright" of white southerners against African Americans and Radical Republicans seeking to build a Black Empire in the South. In particular, the movie showed a gallant Klan defending the honor of white women threatened by lecherous African American men.

Ku Klux Klan members parade in Washington, D.C., during the 1920s, a decade in which Klan membership grew into the millions and the group exerted significant political influence.

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William J. Simmons renewed the KKK at a Stone Mountain, Georgia, ceremony in 1915. Later, Christian fundamentalist ministers aided recruitment as the Klan portrayed itself as the protector of traditional values during the Jazz Age.

As its membership grew into the millions in the 1920s, the Klan exerted considerable political influence, helping to elect sympathetic candidates to state and national offices. The group was strong not only in southern states such as Georgia, Alabama, Louisiana, and Texas, but also in Oklahoma, California, Oregon, Colorado, Kansas, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New Jersey, and New York. Strongly opposed to non–Anglo-Saxon immigration, the Klan helped secure the passage of strict quotas on immigration. In addition to being racist, the group also espoused hatred of Jews, Catholics, socialists, and unions.

By the end of the 1920s, a backlash against the KKK had developed. Reports of its violence turned public sentiment against the group, and its membership declined to about 40,000. At the same time, Louisiana, Michigan, and Oklahoma passed anti-mask laws intended to frustrate Klan activity. Most of these laws made it a misdemeanor to wear a mask that concealed the

identity of the wearer, excluding masks worn for holiday costumes or other legitimate uses. South Carolina, Virginia, and Georgia later passed similar laws.

Anti-Civil Rights Involvement

The KKK experienced another, less successful resurgence during the 1960s as African Americans won civil rights gains in the South. Opposed to the CIVIL RIGHTS MOVEMENT and its attempt to end racial segregation and discrimination, the Klan capitalized on the fears of whites, to grow to a membership of about 20,000. It portrayed the civil rights movement as a Communist, Jewish conspiracy, and it engaged in terrorist acts designed to frustrate and intimidate the movement's members. KKK adherents were responsible for acts such as the 1963 bombing of the Sixteenth Street Baptist Church in Birmingham, Alabama, in which four young African American girls were killed and many others were injured, and the 1964 murder of civil rights workers Michael Schwerner, Andrew Goodman, and James Chaney, in Mississippi. The Klan was also responsible for many other beatings, murders, and bombings, including attacks on the Freedom Riders, who sought to integrate interstate buses.

In many instances, the FEDERAL BUREAU OF INVESTIGATION (FBI), then under the control of J. Edgar Hoover, had intelligence that would have led to the prevention of Klan violence or conviction of its perpetrators. However, the FBI did little to oppose the Klan during the height of the civil rights movement.

By the 1990s the Klan had shrunk to under 10,000 members and had splintered into several organizations, including the Imperial Klans of America, the Knights of the White Kamelia, and the American Knights of the Ku Klux Klan. These factions also sought alliances with a proliferating number of other white supremacist groups, including the Order and Aryan Nations. Like these groups, the KKK put new emphasis on whites as an "oppressed majority," victimized by AFFIRMATIVE ACTION and other civil rights measures.

The Klan's campaign of hatred has spurred opposition from many fronts, including Klanwatch, an organization started by lawyer and civil rights activist Morris Dees in 1980. The group is affiliated with Dees's SOUTHERN POVERTY LAW CENTER, in Montgomery, Alabama. In 1987 Dees won a $7 million civil suit against the Alabama-based United Klans of America for the 1981 murder of a 19-year-old man. The suit drove that Klan organization into BANKRUPTCY. In 1998 Dees and the Southern Poverty Law Center won a civil suit against the Christian Knights of the Ku Klux Klan, who were accused of burning down the Macedonia Baptist Church in Bloomville, South Carolina. The center won an unprecedented $37.8 million in damages.

The KKK suffered other setbacks. For example, in 1990 the Georgia Supreme Court upheld the constitutionality of that state's Anti-Mask Act (Ga. Code Ann. § 16-11-38) by a vote of 6-1 (*State v. Miller,* 260 Ga. 669, 398 S.E.2d 547). The case involved a Klan member who had been arrested for wearing full Klan regalia, including mask, in public and had claimed a FIRST AMENDMENT right to wear such clothing. The court ruled that the law, first passed in 1951, protected a state interest in safeguarding the right of people to exercise their civil rights and to be free from violence and intimidation. It held that the law did not interfere with the defendant's FREEDOM OF SPEECH.

By 2008 KKK membership had been reduced to approximately 6,000 individuals. Despite this reduction in membership, however, the DEPARTMENT OF HOMELAND SECURITY released warnings in 2009, indicating that right-wing extremist groups, such as the KKK, pose an increasing threat to the United States. The warnings reflected that the number of right-wing terrorists is on the rise again, as the result of recruitment campaigns based upon fears related to a down economy. The recruitment is also alleged to be based on racism related to the election of BARACK OBAMA, the nation's first African American President.

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Hugo L. Black and the KKK

Hugo L. Black is remembered as a distinguished U.S. Supreme Court justice, a progressive U.S. Senator, and an able trial attorney. Black also was a member of the Ku Klux Klan (KKK) in the 1920s. Public disclosure of this fact came shortly after his appointment to the Supreme Court was confirmed by the Senate in 1937. The resulting public uproar would probably have doomed his Court appointment if the disclosure had come just a few weeks earlier.

In 1923 Black was a trial attorney in Birmingham, Alabama, which at the time was controlled by members of the Klan. After rebuffing membership several times, he joined the KKK on September 23, 1923. Black later claimed to have left the group after several years, but no clear evidence documented his departure. In 1937 there were allegations he had signed an undated letter resigning from the Klan, which was to have been used to establish a false resignation date if public scandal occurred.

In 1937 Black made a radio address to the nation, in which he admitted his Klan membership but claimed he had resigned and had not had any connection with the group for many years. He also stated he harbored no prejudice against anyone because of their race, religion, or ethnicity.

During his Court career, Black was reluctant to discuss his KKK membership and offered various reasons for why he had joined. To some people he admitted it was a mistake, whereas to others he said the KKK was just another fraternal organization, like the Masons or Elks. It is clear, however, that as an ambitious politician, Black had sought Klan support for his political campaigns. In the 1920s KKK support had been critical to a Democratic politician in Alabama.

Despite his later denial of holding any prejudices, Black was an active member of the KKK for several years. He participated in Klan events throughout Alabama, wearing the organization's characteristic white robes and hood, and initiated new Klan members into the Invisible Empire, reading the Klan oath, which pledged the members to "most zealously and valiantly shield and preserve by any and all justifiable means . . . white supremacy."

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KU KLUX KLAN ACT

The Ku Klux Klan Act of 1871 (ch. 22, 17 Stat. 13 [codified as amended at 18 U.S.C.A. § 241, 42 U.S.C.A. §§ 1983, 1985(3), and 1988]), also called the CIVIL RIGHTS Act of 1871 or the Force Act of 1871, was one of several important CIVIL RIGHTS ACTS passed by Congress during RECONSTRUCTION, the period following the Civil War when the victorious northern states attempted to create a new political order in the South. The act was intended to protect African Americans from violence perpetrated by the Ku Klux Klan (KKK), a white supremacist group.

In March 1871 President ULYSSES S. GRANT requested from Congress legislation that would address the problem of KKK violence, which had grown steadily since the group's formation in 1866. Congress responded on April 20, 1871, with the passage of the Ku Klux Klan Act, originally introduced as a bill "to enforce the provisions of the FOURTEENTH AMENDMENT and for other purposes." Section 1 of the act covered enforcement of the Fourteenth Amendment and was later codified, in part, at 42 U.S.C.A. § 1983. Section 2 of the act, codified at 42 U.S.C. A. § 1985(3), provided civil and criminal penalties intended to deal with conspiratorial violence of the kind practiced by the Klan. Both sections of the act were intended to give federal protection to Fourteenth Amendment rights that were regularly being violated by private individuals as opposed to the state.

In addition, the Ku Klux Klan Act gave the president power to suspend the writ of HABEAS CORPUS in order to fight the KKK. President Grant used this power only once, in October 1871, in ten South Carolina counties experiencing high levels of Klan TERRORISM. The act also banned KKK and other conspiracy members from serving on juries.

The Republicans who framed the Ku Klux Klan Act intended it to provide a federal remedy for private conspiracies of the sort practiced by the KKK against African Americans and others. As had become all too apparent by 1871, local and state courts were ineffective in prosecuting Klan violence. Local and state law enforcement officials, including judges, were often sympathetic to the KKK or were subject to intimidation by the group, as were trial witnesses. The Ku Klux Klan Act would allow victims of Klan violence to take their case to a federal court, where, it was supposed, they would receive a fairer trial.

The act, like other civil rights laws from the Reconstruction era, sparked considerable legal debate. Its detractors claimed that the law improperly expanded federal jurisdiction to areas of CRIMINAL LAW better left to the states. The Supreme Court took this view in 1883 when it struck down the criminal provisions of the act's second section on the ground that protecting individuals from private conspiracies was a state and not federal function (*United States v. Harris,* 106 U.S. 629, 1 S. Ct. 601, 27 L. Ed. 290). This and other rulings stripped the Ku Klux Klan Act of much of its power. Like many other civil rights laws from its era, it went largely unenforced in succeeding decades.

The remaining civil provisions of the act were later codified under 42 U.S.C.A. § 1985(3), where they have been referred to as the conspiracy statute. These provisions hold, in part, that when two or more persons "conspire or go in disguise on the highway or the premises of another, for the purpose of depriving … any person or class of persons of the EQUAL PROTECTION of the law," they may be sued by the injured parties. The civil provisions, or § 1985(3), remained generally unused until the 1971 U.S. Supreme Court decision *Griffin v. Breckenridge,* 403 U.S. 88, 91 S. Ct. 1790, 29 L. Ed. 2d 338. In *Griffin,* the Court reaffirmed the original intention of § 1985(3) and ruled that the statute may allow a civil remedy for certain private conspiracies. The *Griffin* case concerned a 1966 incident in Mississippi in which a group of white men stopped a car out of suspicion that one of its three African American occupants was a civil rights worker. The whites proceeded to beat and threaten the African Americans. The Court upheld one victim's claim that, under § 1985(3), the whites had engaged in a conspiracy to deny him the equal protection of the laws of the United States and Mississippi.

In making its decision, the Court was careful to restrict § 1985 claims to those involving actions motivated by "some racial, or perhaps otherwise class-based, invidiously discriminatory animus." This standard meant that the conspirators in question had to be motivated against a class of persons, not a particular political or social issue. By creating this standard, the Court sought to prevent § 1985(3) from becoming a "general federal tort law" that would cover every type of private conspiracy.

Since *Griffin,* the Court has expressed misgivings about expanding the types of classes protected by the statute. Using the *Griffin* standard, the Court later ruled in *United Brotherhood of Carpenters & Joiners v. Scott,* 463 U.S. 825, 103 S. Ct. 3352, 77 L. Ed. 2d 1049 (1983), that economic or commercial groups could not be considered a class protected by the law. In that case, the Court rejected a claim by nonunion workers who had been attacked by union workers at job sites.

During the 1980s and 1990s, lower federal courts upheld the use of § 1985(3) against antiabortion protesters who blockaded family planning clinics with large demonstrations and disruptions. In one RULING, a federal district court held that an antiabortion group had conspired to violate the right to interstate travel of women seeking to visit family planning clinics (*NOW v. Operation Rescue,* 726 F. Supp. 1483 [E.D. Va. 1989]).

However, in a 1993 case, *Bray v. Alexandria Women's Health Clinic,* 506 U.S. 263, 113 S. Ct. 753, 122 L. Ed. 2d 34, the Supreme Court ruled that § 1985(3) could not be used against antiabortion protesters. The Court held that women seeking ABORTION cannot be considered a class under the terms of the law.

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Civil Rights Acts; Civil Rights Cases; Civil Rights Movement; Jim Crow Laws.

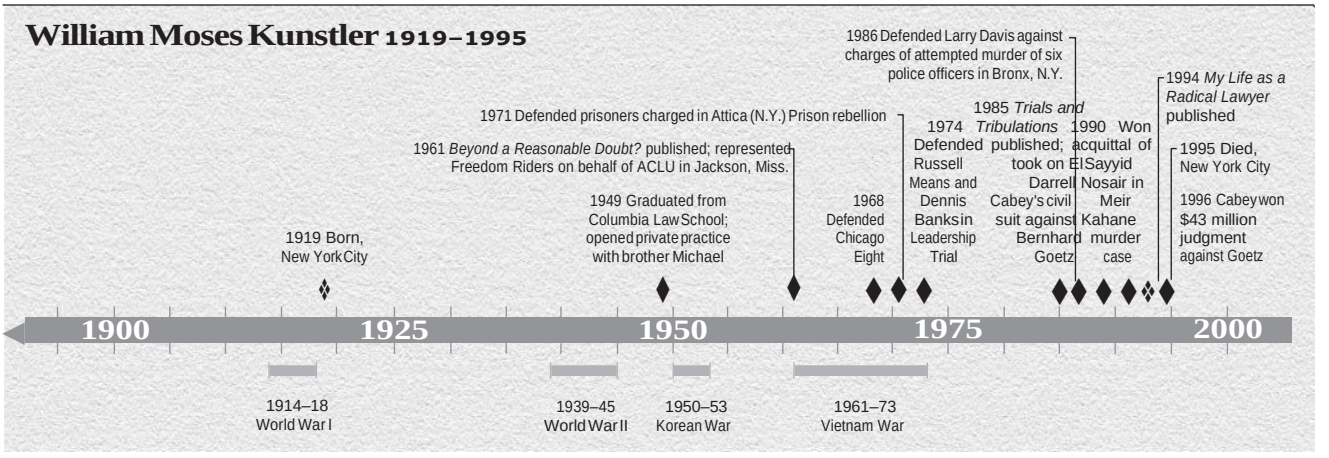
v KUNSTLER, WILLIAM MOSES

WILLIAM MOSES KUNSTLER rose to prominence during the CIVIL RIGHTS MOVEMENT in the 1960s. He represented Freedom Riders, MARTIN LUTHER KING Jr., and the CHICAGO EIGHT. Politics and the law are inseparable in his philosophy. He was the author of 12 books, a sometime Hollywood actor, and a cofounder of the CENTER FOR CONSTITUTIONAL RIGHTS (CCR) in Tennessee.

Even as a child, Kunstler liked trouble. He was born July 7, 1919, in New York City, the eldest of three children of Frances Mandelbaum and Monroe B. Kunstler, a physician. Ignoring schoolwork to run with a street gang called the Red Devils, he worried his conservative Jewish family. He read voraciously on his own, and by high school became a straight A student. At Yale, he majored in French and wrote his senior thesis on the satirist Molière. Then he joined the Army and served in WORLD WAR II as a cryptographer, taking part in General Douglas MacArthur's invasion of the Philippines, earning the Iron Cross, and rising to the rank of major. Afterward, he entered Columbia Law School, mainly to compete with his younger brother, Michael Kunstler.

William M. Kunstler.
AP IMAGES

Kunstler and his brother opened a law practice in 1949. The mundane work bored Kunstler, who wanted more challenge than handling annulments and divorces. He kept busy writing a book on corporate tax law, contributing to the *New York Times Book Review,* teaching at New York Law School, and hosting radio shows whose eclectic guest lists covered personalities ranging from Eleanor Roosevelt to Malcolm X.



In the mid-1950s Kunstler successfully represented a local leader of the National Association for the Advancement of Colored People (NAACP) who had been denied housing because he was black. In 1956 a black journalist had his passport confiscated for violating a national ban on travel to China; he was later arrested on return from Cuba for entering the United States without a passport—in violation of an old federal statute. Kunstler persuaded an appellate court to find the statute unconstitutional. The case had been referred to him by the AMERICAN CIVIL LIBERTIES UNION (ACLU), and a bigger assignment would soon be on the way. Meanwhile, he wrote *Beyond a Reasonable Doubt?* (1961) about the 1960 conviction and execution of CARYL CHESSMAN, a case that had provoked international outrage.

In 1961 the ACLU sent Kunstler to Jackson, Mississippi, where CIVIL RIGHTS workers were being abused by southern police officers and the courts. Known as the Freedom Riders, these young white and black people tried to force integration by riding interstate buses, flouting segregation laws. Beatings awaited them, followed by arrests and quick convictions for disturbing the peace. Kunstler found only hostility in courtrooms throughout the state. He lost case after case. He asked Mississippi governor Ross Barnett for help, but Barnett only lectured him on the need for segregation. Then Kunstler and a fellow attorney, William Higgs, devised an ingenious strategy: discovering an 1866 law designed to protect ex-slaves, they used it to have the cases of civil rights workers removed from state courts and heard by federal judges. The law also mandated that federal courts grant the defendants bail, something Mississippi refused to do.

GOVERNMENT-CREATED CRIME HAS BECOME AN ALL TOO FAMILIAR PHENOMENON OF THE PAST DECADE OR SO.
—WILLIAM KUNSTLER

The civil rights movement lived, prospered, and changed Kunstler's life. He helped found the Center for Constitutional Rights in Nashville, and with its resources, he was so ubiquitous in representing the new leadership that his motto became Have Brief, Will Travel. He defended STOKELY CARMICHAEL, president of the Student Non-violent Coordinating Committee, against sedition charges. He represented leaders of the Black Panthers. But it was his involvement with another prominent black radical, Hubert Geroid Brown—better known as H. Rap Brown—that led him to a new crossroads. Brown's heated speeches around the country struck fear into Congress, which passed in 1968 the so-called Rap Brown statute (18 U.S.C.A. § 2101). The law made it illegal to cross state lines with the intention of inciting a riot. Kunstler saw it as an attempt to crush free speech.

The Rap Brown law created Kunstler's breakthrough case, making him a hero to young people and a virtual outlaw to the legal establishment. In this case, he defended the Chicago Eight, a group of antiwar leaders charged with conspiracy after the Chicago police cracked down on protesters outside the 1968 Democratic National Convention. Among the Eight were Abbie Hoffman and Jerry Rubin, Students for a Democratic Society leader Tom Hayden, and BLACK PANTHER PARTY cofounder Bobbie Seale. The trial drew national attention, divided public opinion, and often thrilled with its circus atmosphere. Kunstler argued ferociously in court with Judge Julius J. Hoffman, especially after the judge ordered Seale to be gagged and bound to a chair.

After the jury's near-total acquittal of the defendants, Judge Hoffman slapped each defendant with a contempt-of-court sentence. He reserved the most serious punishment for Kunstler, giving the attorney four years and thirteen days in prison for twenty-four counts of contempt. However, this sentence and the sentences of the defendants were all overturned by an appellate court. Kunstler also managed to escape the wrath of the New York BAR ASSOCIATION, which ultimately dropped its bid to discipline him.

The era of protest that helped create Kunstler's politics came to a close in the early 1970s, but not without a last great upheaval. In 1972 and 1973, leaders of the AMERICAN INDIAN MOVEMENT (AIM) occupied the historic town of Wounded Knee, South Dakota, in protest of the U.S. government's long practice of ignoring treaties and its hostility toward Native Americans. Kunstler was at the barricades during the 71-day siege, and later he was in court to defend AIM leader Russell Means. He also represented Native American activist Leonard Peltier through 15 years of litigation.

In the 1980s and 1990s he represented reputed Mafia bosses, an accused murderer of police officers, one of the so-called Central Park rapists, a youth shot by vigilante Bernhard Goetz, a convicted Atlanta child murderer, and more. He became involved in the cases of

defendants accused of plotting to blow up the World Trade Center in New York, as well as the case of Colin Ferguson, a Jamaican immigrant accused of killing six white commuters and wounding nineteen on the Long Island Railroad in 1993. Kunstler's proposed "black rage" defense of Ferguson—in short, that racism could drive a person to murder—provoked a fierce backlash from many critics, including Kunstler's frequent nemesis, the attorney ALAN M. DERSHOWITZ.

At the age of 76, Kunstler still reportedly worked 14-hour days in his home. Assisted by his partner, attorney Ron Kuby, he took most of his cases for free. He also did a bit of acting, appearing as a fire-breathing judge in director Spike Lee's 1992 film *Malcolm X.* In 1994 he completed his 12th book, *My Life as a Radical Lawyer,* in which he held to his belief that a revolution is still inevitable.

Kunstler died on September 4, 1995, at the age of 76, of heart failure. Ron Kuby, his longtime law partner, vowed to continue doing free legal work in their firm, Kunstler & Kuby. Similarly, friends and family established the William Moses Kunstler Fund for Racial Justice as a memorial.

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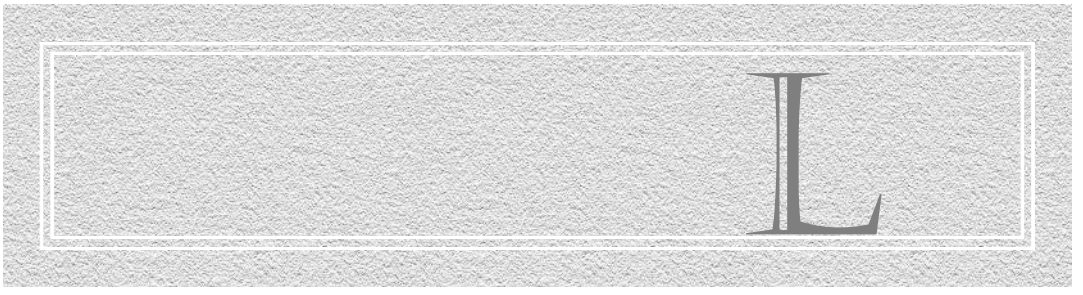

v LA FOLLETTE, ROBERT MARION

Robert Marion La Follette was an important U.S. political leader during the first part of the twentieth century. He served as governor of and senator from Wisconsin, and was at the forefront of the political reform movement that has been labeled Progressivism.

La Follette was born in Primrose, Wisconsin, on June 14, 1855. He graduated from the University of Wisconsin at Madison in 1879 and then studied law without going to law school. He was admitted to the Wisconsin bar in 1880 and began a legal practice in Madison. He was district attorney for Dane County, Wisconsin, from 1880 to 1884. In 1885 he was elected as a Republican representative to the U.S. Congress. He served three terms and then was defeated in 1890.

Following his loss La Follette resumed his law practice in Madison. During the 1890s he became a vocal opponent of state leadership of the REPUBLICAN PARTY. He rejected its conservatism and its reluctance to allow government a role in correcting social, political, and economic problems that had grown larger during the last two decades of the nineteenth century.

La Follette's reform desires were part of the national Progressive movement. Though not a unified political philosophy, Progressivism was built on the assumption that all levels of government must play an active role in reform. Progressives like La Follette argued that corporate capitalism had given too much power to large economic elites and had created inequities in the social and economic order. In addition, Progressives argued, the political parties, especially at the state and local level, had too much control and were stifling democratic change.

La Follette's ideas proved popular in Wisconsin. He was elected governor in 1900 and immediately began implementing his Progressive agenda. The Wisconsin Legislature passed many of his measures, including those mandating the nomination of candidates by direct vote in primary elections, the equalization of taxes, and the regulation of railroad rates.

He returned to the national political arena, serving as U.S. senator from 1906 to 1925. He became a leader of the Progressive wing of the Republican party and frequently voiced opposition to the conservative party leadership. As a senator he advocated tougher regulation of railroads, going so far as to call for public ownership of the rail industry. He believed in progressive income taxes, government control of banking, and conservation of natural resources.

La Follette was an isolationist, holding that the United States should not become entangled in foreign alliances and foreign wars. He voted against the U.S. entry into WORLD WAR I and later

NEITHER THE CLAMOR OF THE MOB NOR THE VOICE OF POWER WILL EVER TURN ME BY THE BREADTH OF A HAIR FROM THE COURSE I MAKE OUT FOR MYSELF.
—ROBERT MARION LA FOLLETTE

Robert M. La Follette.
LIBRARY OF CONGRESS

opposed President Woodrow Wilson's plan to have the United States join the LEAGUE OF NATIONS and the World Court.

The conservative Republican administrations of WARREN G. HARDING and CALVIN COOLIDGE proved too much for La Follette. In 1924, after the Republican National Convention rejected his platform proposals, La Follette left the party. He formed the League for Progressive Political Action, commonly known as the PROGRESSIVE PARTY, and accepted its presidential nomination. Drawing support from farm groups, labor unions, and the SOCIALIST PARTY, La Follette waged a spirited third-party campaign. He earned almost 5 million popular votes. But La Follette was not a serious threat to the election of Coolidge; he received only thirteen electoral votes, carrying only his home state of Wisconsin.

Following his defeat La Follette continued as U.S. senator. He died in Washington, D.C., on June 18, 1925. His son, ROBERT M. LA FOLLETTE, Jr., succeeded him as senator. The younger La Follette kept the Progressive party alive for another 20 years.

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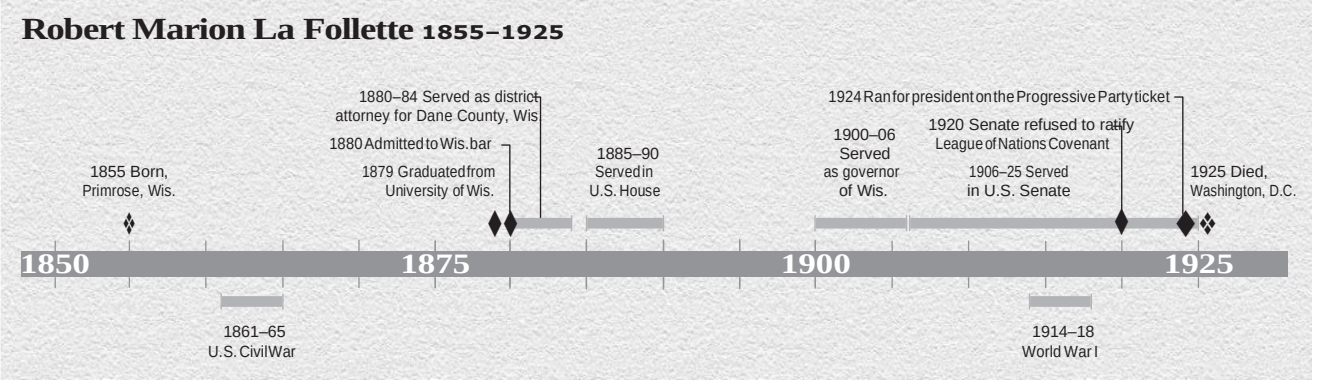
LABOR-MANAGEMENT RELATIONS ACT

Federal legislation (29 U.S.C.A. § 141 et seq. [1947]), popularly known as the TAFT-HARTLEY ACT, which governs the conduct of designated union activities, such as by proscribing strikes and boycotts, and establishes the framework for the resolution of labor disputes in times of national emergencies.

CROSS REFERENCES

Labor Law; Labor Union.



LABOR DEPARTMENT

The DEPARTMENT OF LABOR (DOL) administers federal labor laws for the EXECUTIVE BRANCH of the federal government. Its mission is "to foster, promote, and develop the WELFARE of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment" (29 U.S.C.A. § 551 [1985]). The DOL was created in 1913 out of four bureaus from the DEPARTMENT OF COMMERCE and Labor: the Bureau of Labor Statistics, Bureau of IMMIGRATION, Bureau of Naturalization, and Children's Bureau.

The DOL is headed by the secretary of labor, who serves in the president's CABINET. The department's numerous responsibilities include administering and enforcing federal labor laws guaranteeing workers' rights to safe and healthful working conditions, a minimum hourly wage and overtime pay, freedom from employment discrimination, unemployment insurance, and workers' compensation. The department protects workers' pension rights, provides for job training programs, helps workers find jobs, and works to strengthen the COLLECTIVE BARGAINING process. It keeps track of changes in employment, prices, and other economic measurements. The DOL also makes special efforts to address the unique job market problems of minorities, women, children, the elderly, disabled persons, among other classes of workers.

The major bureaus and agencies within the DOL are the Employment and Training Administration, Employee Benefits Security Administration, Employment Standards Administration, Occupational Safety and Health Administration, Mine Safety and Health Administration, Bureau of Labor Statistics, and Veterans' Employment and Training Service. Other organizations, including the Women's Bureau, Office of the American Workplace, Bureau of International Labor Affairs, Office of the Assistant Secretary for Policy, and the Office of Disability Employment Policy, also function within the department.

Employment and Training Administration

The Employment and Training Administration (ETA) administers major programs relating to employment services, job training, and unemployment insurance. The ETA also administers a federal-state employment security system, funds and oversees programs to provide work experience and training for groups having difficulty entering or returning to the workforce, and formulates and promotes apprenticeship standards and programs.

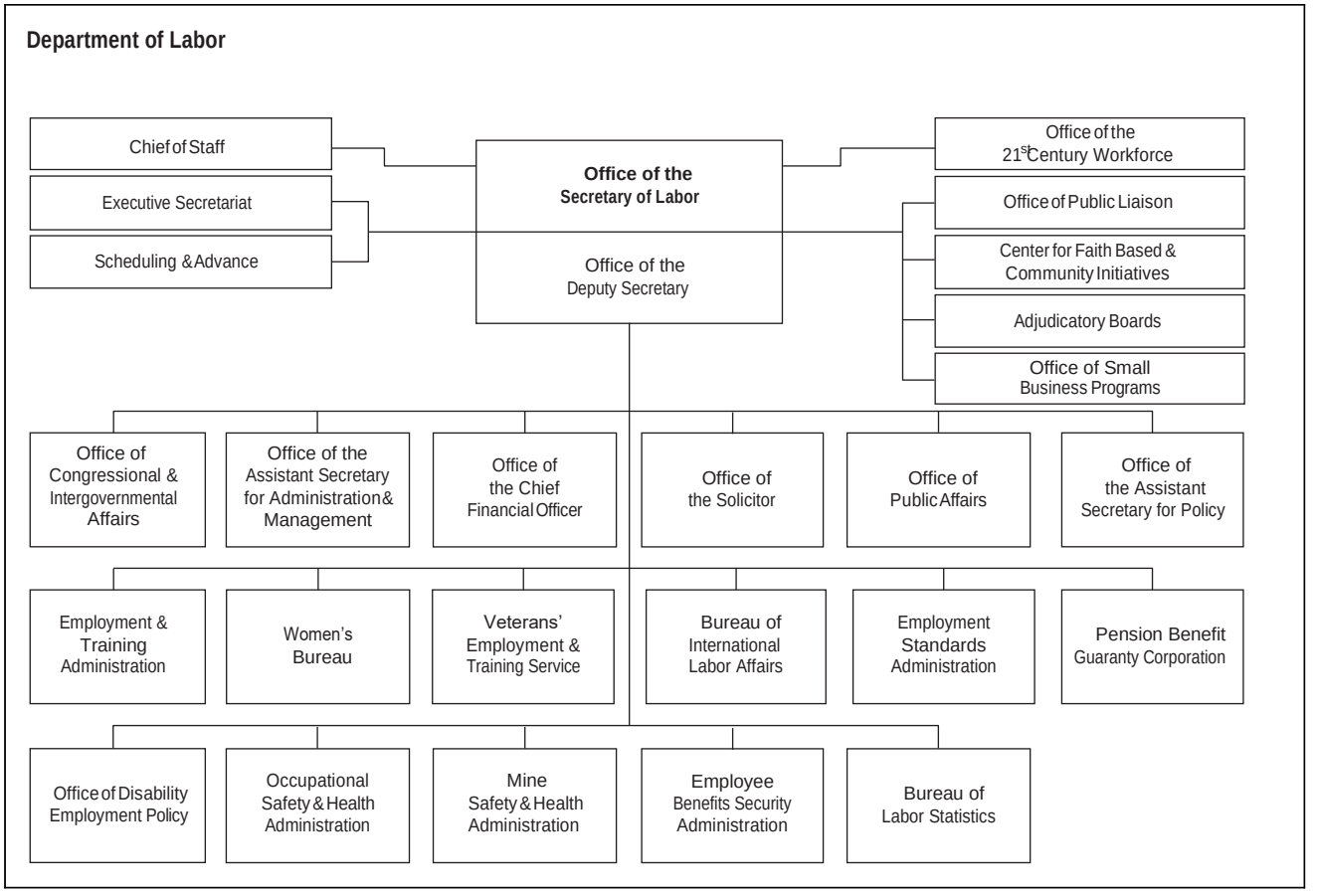
The Employee Benefits Security Administration (EBSA) helps protect the economic future and retirement security of workers, as required under the EMPLOYEE RETIREMENT INCOME SECURITY ACT of 1974 (ERISA) (29 U.S.C.A. § 1001). EBSA assists over 200 million participants and beneficiaries in pension, health, and other employee benefit plans. It also assists more than three million plan sponsors and members of the employee benefit community. EBSA promotes voluntary compliance and facilitates self-regulation to provide assistance to pension and benefit plan participants and beneficiaries. ERISA requires administrators of private pension and welfare plans to provide plan participants with easily understandable summaries of their plans. These summaries are filed with the EBSA, along with annual reports on the financial operations of the plans and on the bonding of persons charged with handling plan funds and assets. Plan administrators must also meet strict FIDUCIARY responsibility standards, which are enforced by the EBSA.

Employment Standards Administration

The Employment Standards Administration administers minimum wage and overtime standards through its Wage and Hour Division. This division seeks to protect low-wage incomes as provided by the minimum wage provisions of the FAIR LABOR STANDARDS ACT (29 U.S.C.A. § 201), and to discourage excessively long hours of work through the enforcement of the overtime provisions of the act. The division also determines the prevailing wage rates for federal construction contracts and federally assisted programs for construction, alteration, and repair of public works subject to the DAVIS-BACON ACT (40 U.S.C.A. § 276a) and related acts.

Occupational Safety and Health Administration

The Occupational Safety and Health Administration (OSHA) has responsibility for occupational safety and health activities. OSHA was established by the OCCUPATIONAL SAFETY AND HEALTH



ACT OF 1970 (29 U.S.C.A. § 651 et seq.). It develops and issues occupational safety and health standards for various industries and occupations. OSHA also formulates and publishes regulations that employers are to follow in maintaining health and safety. It conducts investigations and inspections to determine compliance with these standards and regulations, and if it finds noncompliance, it may issue citations and propose penalties.

Mine Safety and Health Administration

The Mine Safety and Health Administration (MSHA) is responsible for safety and health in coal and other mines in the United States. The Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C.A. § 801 et seq.) gave the MSHA strong enforcement provisions to protect coal miners, and in 1977 the act was amended to protect persons working in the non-coal areas of the mining industry, such as silver mining.

The MSHA develops and promulgates mandatory safety and health standards for the mining industry, inspects mines to ensure compliance, investigates mining accidents, and assesses fines for violations of its regulations. It helps the states develop effective state mine safety and health programs. The MSHA also conducts research on mine safety, in the hope of preventing and reducing mine accidents and occupational diseases.

Bureau of Labor Statistics

The Bureau of Labor Statistics is the principal data gathering agency of the federal government in the broad field of labor economics. It has no enforcement or regulatory functions. The bureau collects, processes, analyzes, and disseminates data relating to employment, unemployment, and other characteristics of the labor force. It also analyzes prices and consumer expenditures, economic growth and employment projections, and occupational health and safety. Most of the data are collected by the bureau, the Bureau of the Census, or state agencies.

The basic data are issued in monthly, quarterly, and annual news releases, bulletins, reports, and special publications. Data are also provided electronically, including on the INTERNET.

Veterans' Employment and Training Service

The Veterans' Employment and Training Service directs the DOL veterans' employment and training programs through a nationwide network of support staff. The service's field staff work closely with state employment security agencies to ensure that veterans are provided the priority service required by law. The service provides public information and designs outreach activities that seek to encourage employers to hire veterans. It also administers programs designed to meet the employment and training needs of veterans with service-connected disabilities, Vietnam-era veterans, and veterans recently separated from military service.

Other Agencies

The Women's Bureau formulates standards and policies that promote the welfare of wage earning women, improve their working conditions, increase their efficiency, and advance their opportunities for profitable employment.

The Office of the American Workplace was created in 1993 to enhance employer-employee relations and collective bargaining, as well as to ensure that labor unions are run democratically. It works to establish labor-management networks that disseminate information concerning cooperative labor-management relations and high-performance workplace practices. It conducts investigative audits to uncover and remedy criminal and civil violations of federal law. Its Office of Labor-Management Standards conducts criminal and civil investigations to safeguard the financial integrity of unions and to ensure union democracy.

The Bureau of International Labor Affairs carries out DOL international responsibilities. It works with other government agencies to formulate international economic, trade, and immigration policies affecting U.S. workers. The bureau represents the United States on delegations to multilateral and bilateral trade negotiations and in international bodies such as the GENERAL AGREEMENT ON TARIFFS AND TRADE, International Labor Organization, Organization for Economic Cooperation and Development, and other U.N. organizations. It also helps administer the U.S. labor attaché program at embassies abroad and carries out technical assistance projects in other countries.

The Office of the Assistant Secretary for Policy (OASP) advises and assists the secretary of labor in, and coordinates and provides leadership to, the department's activities in addressing economic policy issues, conducting economic research, and formulating regulations and procedures bearing on the welfare of American workers. OASP also provides leadership and oversight for coordinating and managing the department's public Web site, ensuring its information and services are cohesive, accessible, timely, accurate, and authoritative.

In 2001 Congress approved an Office of Disability Employment Policy (ODEP). Part of the Department of Labor, ODEP is headed by an assistant secretary. ODEP provides leadership to increase employment opportunities for adults and youth with disabilities. ODEP serves individuals with disabilities and their families; private employers and their employees; federal, state, and local government agencies; educational and training institutions; disability advocates; and providers of services and government employers.

The secretary and all of the separate offices, bureaus, and agencies in the Department of Labor receive support from seven administrative bodies: the Office of Congressional and Intergovernmental Affairs, OFFICE OF ADMINISTRATION and Management and Chief Information Office, Office of the Chief Financial Officer, Office of the Solicitor, Office of the Inspector General, Office of Public Affairs, and Office of Small Business Programs. These seven administrative bodies assist the secretary and the Department of Labor to function smoothly, to maintain its vast records, to publicize its initiatives, and to represent the department in Congress regarding issues, legislation, and programs and initiatives that fall within the broad scope of the Labor Department's responsibility.

On March 6, 2001, the labor secretary announced the creation of a new Office of the 21st Century Workforce. The 21st Century Workforce mission is to help ensure that all American workers have the opportunity to equip

themselves with the necessary tools to succeed in their careers in the environment of rapid change and technological innovation that marks this period in the history of the American workforce. The changes in national and global economies include a fundamental transformation for all industries and increasingly require higher skill sets and higher education.

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CROSS REFERENCES

Collective Bargaining; Employment Law; Labor Law; Labor Union; Mine and Mineral Law; Workers' Compensation.

LABOR LAW

An area of the law that addresses the rights of employers, employees, and labor organizations.

U.S. labor law covers all facets of the legal relationships among employers, employees, and employee labor unions. Employers' opposition to recognizing employees' rights to organize and bargain collectively with management has resulted in a system of primarily federal laws and regulations that is adversarial in nature. Modern labor law dates from the passage of the WAGNER ACT of 1935, also known as the National Labor Relations Act (NLRA) (29 U.S.C.A. §§ 151 et seq.). Congress has passed two major revisions of this act: the TAFT-HARTLEY ACT of 1947, also known as the Labor Management Relations Act (29 U.S.C.A. §§ 141 et seq.), and the LANDRUM-GRIFFIN ACT of 1959, also known as the Labor Management Reporting and Disclosure Act (29 U.S.C.A. §§ 401 et seq.).

The railroad and airline industries are governed by the Federal Railway Labor Act (45 U.S.C.A. § 151 et seq.), originally passed in 1926 and substantially amended in 1934. Federal employees are covered by the separate Federal Service Labor Management and Employee Relation Act (5 U.S.C.A. §§ 7101 et seq.). Labor law is also made by the NATIONAL LABOR RELATIONS BOARD (NLRB), an ADMINISTRATIVE AGENCY that enforces federal labor statutes, and by federal courts when they interpret labor legislation and NLRB decisions. In addition, state and municipal employees are covered by state law.

A basic principle of U.S. labor law is that the SUPREMACY CLAUSE of the CONSTITUTION authorizes Congress to prohibit states from using their powers to regulate labor relations. The ability of Congress to pre-empt state labor laws has been defined largely by the U.S. Supreme Court because the NLRA is imprecise about what states can and cannot do. The Court has set out two basic principles concerning pre-emption: Not all state labor laws are pre-empted by federal statute, and conduct actually protected by the federal statutes is immune from state regulation. For example, vandalism committed by a union organizing campaign may be subject to state criminal and civil sanctions. A strike in an industry subject to the NLRA that is aimed at improving wages cannot be prohibited by the state.

Historical Background

Labor law traces its roots to the early 1800s, when employees who banded together to strike for improved working conditions were branded as criminals. By the mid-nineteenth century, the law changed to recognize the right of workers to organize and conduct COLLECTIVE BARGAINING with their employers. Employers, however, were not receptive to unions. Between 1842 and 1932, they routinely used injunctions to stop strikes and to frustrate union organizing. The NORRIS-LAGUARDIA ACT (29 U.S.C.A. §§ 101 et seq.) was passed by Congress in 1932 to curb the use of labor injunctions, preventing employers from going through the federal courts to quash unions. The passage of the Wagner Act three years later signaled the beginning of a new era in labor relations and labor law. The legacy of employer-union conflict shaped the new system of government regulation of labor-management relations.

Modern Labor Law

The NLRA is the most important and widely applicable U.S. labor law. Its section 7 (29 U.S.C.A. § 157) guarantees employees "the right to self-organization; to form, join, or assist labor organizations; to bargain collectively, through representatives of their own choosing; and to engage in other concerted activities for ... mutual

aid or protection." Employees are also entitled to "refrain from any or all such activities." The act prohibits employers and unions from committing "unfair labor practices" that would violate these rights or certain other specified interests of employers and the general public in various circumstances.

Labor law generally addresses one of three different situations: (1) a union attempts to organize the employees of an employer and to get the employer to recognize it as the employees' bargaining representative; (2) a union seeks to negotiate a COLLECTIVE BARGAINING AGREEMENT with an employer; or (3) a union and employer disagree on the interpretation and application of an existing contract between the two. Within these three situations, specific rules have been created to address rights of employees and employers.

Organization and Representation of Employees Under the NLRA, neither employers nor unions may physically coerce employees or discriminate against them on the job because they do or do not wish to join a union, engage in a peaceful strike or work stoppage, or exercise other organizational rights. Although an employer is forbidden to discharge peaceful strikers, it may hire replacement workers to carry on business.

When the employees of a particular company decide to be represented by a union, they usually contact the union's parent association or local division for aid and guidance. The union may solicit membership by holding meetings to discuss how working conditions can be improved, and by distributing leaflets.

The employees, union, or employer may file with the NLRB a petition to conduct an election to decide whether the union should be the collective bargaining representative. This petition must meet with the support of at least 30 percent of the employees in the bargaining unit named in the petition. Once the petition has been filed, the NLRB must determine whether any obstacles exist to holding the election. If not, the NLRB will attempt to get the union and employer to agree to an election.

If the union and employer agree to an election, the NLRB conducts a secret ballot election to determine whether the majority of the employees in the bargaining unit desire to be represented by the union. During the election campaign, both employer and union may freely express their views about unionization of employees, but neither may resort to threats or bribes. If the union wins the election, the NLRB will certify it as the exclusive bargaining representative of the employees. The union may then be designated an appropriate bargaining unit of a particular category of workers.

A union is generally entitled to picket or patrol with signs reading "Unfair" for up to 30 days at the place of business of an employer it is trying to organize. To picket longer for organizing purposes, the union must file for an NLRB election. If the union then loses the election, it is forbidden to resume such picketing for a year. The U.S. Supreme Court upheld the right to peaceful union picketing in *Thornhill v. Alabama,* 310 U.S. 88, 60 S. Ct. 736, 84 L. Ed. 1093 (1940).

Negotiation of a Collective Bargaining Agreement Collective bargaining is the process by which an employer and an accredited employee representative negotiate an agreement concerning wages, hours, and other terms and conditions of employment. An employer and a union representing its employees have a mutual obligation under the NLRA to bargain with each other in GOOD FAITH. The primary goal of collective bargaining is to promote industrial peace between employers and employees. The parties have a duty to try reasonably to accommodate differences and reach common ground, but ultimately they have no obligation to enter into a contract.

The FEDERAL MEDIATION AND CONCILIATION SERVICE or state labor agencies may provide parties with mediators to help them negotiate. Mediators act as neutral facilitators. It is a fundamental tenet of federal labor policy that unions and management should resolve their disputes through voluntary collective bargaining and not through the imposition of a solution by the government. If a labor dispute becomes serious enough to affect national health or safety significantly, the president has the statutory authority to obtain an 80-day injunction from the federal courts against any strike or lockout. This procedure has been used over three dozen times since 1947, but rarely since the 1970s.

Pressure to Resolve a Contract Dispute When an employer and a union are unable to resolve

their differences and negotiate an employment contract, the parties may use different types of pressure to produce an agreement, including boycotts, strikes, the carrying of signs and banners, picketing, and lockouts.

A labor boycott is any type of union action that seeks to reduce or stop public patronage of a business. It is a refusal to purchase from or to handle the products of a particular employer. Employees may legally exert economic pressure on their employer through a boycott, so long as they act peacefully. But a union is forbidden to engage in a secondary boycott. For example, if a union's primary dispute is with a hardware manufacturer, it may not picket or use other methods to get the employees of a hardware store, who are neutral or secondary parties, to stage a strike at the store in order to force it to cease handling the manufacturer's products.

A strike is a concerted refusal of employees to perform work that they have been assigned, in order to force the employer to grant concessions that the employees have demanded. The right of employees to strike is protected by the courts. A lawful strike must be conducted in an orderly manner and may not be used as a shield for violence or crime. Intimidation and coercion in the course of a strike are unlawful. The peaceful carrying of signs and banners advertising a labor dispute is ordinarily a lawful means to publicize employees' grievances against an employer.

Picketing consists of posting one or more union members at the site of a strike or boycott, in order to interfere with a particular employer's business or to influence the public against patronizing that employer. It can be reasonably regulated. Lawful picketing is peaceful and honest. The use of force, intimidation, or coercion on a picket line is not constitutionally protected activity. In addition, employees are not acting within their rights when they seize any part of the employer's property.

A lockout is an employer's refusal to admit employees to the workplace, in order to gain a concession from them. In *American Ship Building Co. v. NLRB,* 380 U.S. 300, 85 S. Ct. 955, 13 L. Ed. 2d 855 (1965), the U.S. Supreme Court upheld the right of an employer to lock out employees if the intent is to promote the company's bargaining position and not to destroy the collective bargaining process or the union.

With some frequency, lower federal courts and the National Labor Relations Board have upheld lockouts by employers. In *Local 702, International Brotherhood of Electrical Workers v. NLRB,* 215 F.3d 11 (D.C. Cir. 2000), the U.S. Court of Appeals upheld a RULING by the NLRB finding that an employer's lockout did not violate the NLRA. Employees of the union in the case resorted to "inside game" tactics, where the employees refused to work voluntary overtime and adhered strictly to company rules to such an extent that it slowed the company's productivity. The union began using this strategy during labor negotiations with the company. The company imposed a lockout of the employees in order to facilitate the negotiations and to counter the effects of the union's strategy. The appellate court, in upholding a decision by the NLRB, found that the employer had legitimate and substantial business justifications for the lockout and that the union had not proven that the employer had acted with an improper motive in initiating the lockout.

Unfair Labor Practices

An unfair labor practice is any action or statement by an employer that interferes with, restrains, or coerces employees in their exercise of the right to organize and conduct collective bargaining. Such interference, restraint, or coercion can arise through threats, promises, or offers to employees.

An unfair labor practice can occur during collective bargaining. In *Auciello Iron Works v. NLRB,* 517 U.S. 781, 116 S. Ct. 1754, 135 L. Ed. 2d 64 (1996), the U.S. Supreme Court upheld an NLRB ruling that the employer had committed an unfair labor practice. After the union accepted one of the employer's collective bargaining proposals, the employer disavowed the agreement because of good faith doubts about whether the union still commanded a majority of the employees. The Court reasoned that the employer's doubts arose from facts that the employer had known about before the union had accepted its contract offer.

Labor laws are not intended to interfere with an employer's normal exercise of discretion in hiring and firing employees. In general, an employer may hire employees based on their individual merit, with no regard to union affiliation. Refusal to hire an applicant owing to affiliation with a LABOR UNION is an unfair labor practice.

The motive of an employer in discharging an employee may be a controlling factor in determining whether the discharge is an unfair labor practice. An employer's history of anti-union bias is an extremely important factor in ascertaining the motive for discharge of an employee. An employer may discharge an employee on various grounds without being guilty of an unfair labor practice. Such grounds include misconduct, unlawful activity, disloyalty, and termination of the business operation. In addition, inefficiency, disobedience, or insubordination is proper grounds for dismissal, provided the discharge is not motivated by the employer's reaction to union activity. Firing an employee based on union activity or membership is an unfair labor practice. Furthermore, the filing of unfair labor practice charges or the giving of testimony in a case based on such charges does not warrant dismissal.

In general, an unfair labor practice exists when an employer contributes financial or any other support to a labor organization. An employer must, therefore, remain neutral between competing unions. It is also an unfair labor practice for an employer to dominate or interfere with the formation or administration of any labor organization.

A union commits an unfair labor practice when it causes, or attempts to cause, an employer to hire, discharge, or discriminate against an employee for the purpose of encouraging or discouraging union activity. The same is true when a union restrains or coerces employees in the exercise of their rights to self-organize; to form, join, or assist labor unions; to bargain collectively; or to refrain from any of these activities. The refusal of a labor organization to bargain collectively or to execute a formal document embodying agreement with an employer is another unfair labor practice.

Contract Enforcement and Contract Disputes

Almost every collective bargaining agreement in the United States contains a GRIEVANCE PROCEDURE. In the grievance procedure, the union and the employer try to settle any disputes over the meaning or application of the contract by themselves. If the parties fail, they may invoke arbitration, a procedure that typically calls for referring the issue to an impartial third party for a final and binding determination.

Grievance provisions of a collective bargaining agreement govern the procedure to be followed to settle on-the-job disputes. Typical grievance procedures generally consist of at least three steps: (1) an employee and his or her union steward present their complaint orally to the supervisor, who has the power to settle it; (2) in the event that the matter is not settled at that stage, it is reduced to writing, and the union steward and union officers confer with management; (3) if no agreement is reached, the aggrieved employee may submit the matter to arbitration, which will be binding on all parties.

The arbitration of disputes under a collective bargaining agreement is a matter of contract, and the parties to it may delineate the scope of their arbitration clause. Common grievances settled under arbitration clauses include disputes over seniority rights, employee discipline, pension or WELFARE benefits, rates of pay, and hours of work. Ordinarily, the issue of whether a strike or lockout is a breach of an agreement is a proper subject for arbitration.

The vast majority of union-employer contract disputes are resolved in a grievance procedure, and most of the rest are disposed of routinely through arbitration. Occasionally, a party will resist arbitration or will refuse to comply with an arbitrator's award. In such a case, section 301 of the Taft-Hartley Act authorizes a suit in federal court to enforce the agreement to arbitrate or the arbitrator's award.

The federal courts have enforced a pro-arbitration policy in labor contracts. If a union strikes over a grievance it could have arbitrated, the employer may secure an injunction against the strike under section 301 of the Taft-Hartley Act, even though ordinarily the Norris-LaGuardia Act prevents the federal courts from enjoining strikes by labor unions.

Regulation of Unions

The Landrum-Griffin Act contains provisions that regulate how labor unions conduct their internal affairs. These provisions seek to prevent union corruption and to guarantee to union members that unions will be run democratically. The act provides a BILL OF RIGHTS for union

Reinventing the Workplace: Improving Quality, or Creating Company (Sham) Unions?

Foreign competition, technological change, and concerns about declining productivity have led to significant modifications in the way many U.S. businesses manage their affairs. These changes, which have been championed by a long list of management consultants, have appeared under numerous labels, including *quality circles* and *total quality management (TQM).* All of these approaches emphasize that the goal of a business is to achieve a high standard of quality in goods manufactured or services provided. To meet this quality goal, businesses have moved away from top-down management, substituting a team approach. Traditional management personnel and line-level workers meet in committees to discuss and resolve issues within the company concerning product, service, and the way work is organized.

The advocates of teamwork and quality circles have hit a legal brick wall in the National Labor Relations Act of 1935 (NLRA) (29 U.S.C.A. § 151 et seq.). Under the NLRA, sections 2(5) and 8(A)(2), employers are forbidden to create employer-dominated company unions. In *Electromation,* 309 N.L.R.B. 990 (1992), the NATIONAL LABOR RELATIONS BOARD (NLRB) ruled that Electromation, a nonunion company, could not sponsor an "action committee" because that committee was, under the NLRA provisions, a labor organization. Additional cases have confirmed the NLRB's position on this issue.

Proponents of quality circles and teamwork argue that the NLRA is an antiquated set of laws, based on a period of U.S. history when businesses used every tool at their disposal to subvert unions and union organization. The adversarial posture of labor and management may have made sense in the past, this argument goes, but it is counterproductive in an economy that must adapt quickly to world market forces. The most radical proposal by critics of the NLRB's position on this issue is to abolish the NLRA altogether.

More moderate proponents argue instead for changes in the NLRA to permit committees, teams, and more of what they call workplace democracy. They point out that with the steady decline of union membership and blue-collar jobs, traditional labor-management relations have become irrelevant. They note that white-collar workers, who now dominate the U.S. economy, are less likely to join a LABOR UNION. Therefore, worker morale and job satisfaction are better when employees are included in the decision-making process of a business.

Proponents of quality circles also believe that a better educated workforce is capable of making informed decisions about its relations with employers. They assert that the days of the employer's being an absolute sovereign are over. It is more productive to allow nonunion employees to organize within the company based on committees and circles. These workers are entitled to the same type of participatory democracy found in labor unions.

Most proponents would give employees the chance to make up their own mind about their work environment. If a union successfully wins over

members, requires certain financial disclosures by unions, prescribes procedures for the election of union officers, and provides civil and criminal remedies for financial abuses by union officers.

Employees who are not union members can be required to paid a portion of the union dues as a condition of their employment. These contributions are called "service fees." Since 1956 the Supreme Court has issued rulings on what service fees may be charged to nonmembers without violating the FIRST AMENDMENT rights of nonmembers. The general approach to analyzing the components of a service fee has been to exempt from the fee political or ideological activities with which the nonmembers might disagree. The Court determined that the payment of the service fee furthered the government's interest in preventing free-riding by nonmembers who benefit from the union's collective bargaining actions and in preserving peaceful labor relations. In *Locke v. Karass*,_U.S.__, 129 S.Ct. 798,_L.Ed.2d (2009), the Court ruled that a union could charge nonmembers for "national litigation" expenses as long as the litigation was of the type that would be chargeable if the litigation were local and the charge were reciprocal in nature. National litigation expenses are those that do not directly benefit the local union. The Court concluded that the fee could be collected if the subject-matter of the litigation were related to collective bargaining and the arrangement were reciprocal. In this context, reciprocal would mean that the local's payment to the national organization was for services "that may

enough employees to be certified as the legal BARGAINING AGENT, that would indicate dissatisfaction with the employer and would be an acceptable outcome. These proponents would object to unions filing complaints with the NLRB over company committees where the employees have rejected union representation in the past. As long as employees want to participate in a company committee or circle, they should be permitted to do so.

Proponents argue that the bar on these types of workplace organizational innovations hurts workers. These innovations give employees more autonomy to plan work schedules, meet deadlines, operate equipment, make repairs, and handle health and safety issues. In the past an employee could suggest a change to management but then had to stand back and observe whether the change took place. In today's workplace an employee wants to implement as well as suggest improvements.

Finally, proponents note that in union-organized companies unions are free to negotiate the participation of employees in teams and quality circles. They suggest that it is unfair to restrict nonunion employees from electing to participate in similar business management ventures.

The U.S. labor movement has resisted vigorously the introduction of employee involvement programs by management in both union and nonunion environments. Labor union leadership views the introduction of employer-sponsored committees as a return to the past and as a way of undercutting the ability of unions to organize white-collar workers.

Opponents point out the sordid history of U.S. labor relations prior to the passage of the NLRA in 1935. Company-sponsored unions were put forward as a way to resolve disputes over wages, hours, and other conditions of employment. Employees believed that these unions acted in GOOD FAITH to negotiate a contract with management. In reality, these organizations were sham unions, dominated by the employer. The employers would put company spies in them to monitor what was discussed. Employees were either bought off or fired if they proved too effective in their union duties.

Opponents argue that the NRLA is preserving the independence of labor unions. Without its decisions employers of nonunion employees would use *TQM, quality circles,* and other buzzwords to promote a nonunion status that would place employees at a disadvantage. Employees will quite likely be intimidated in employer-organized groups, and unable to raise or meaningfully discuss certain issues that management does not want to hear. Without a COLLECTIVE BARGAINING AGREEMENT negotiated by a union, opponents maintain, employees will not have job security or promotion protection.

Opponents also question who makes the decisions in these groups. Though the rhetoric suggests empowerment of employees, employee committees are purely advisory, and the employer retains the authority to decide all issues. In addition, because management creates these committees, management can dissolve them at any time. The inequality of power within a nonunion business dictates that the employer can do whatever management wants, regardless of a recommendation by an employee committee.

The NLRA has placed a barrier to new models of business organization. The distrust of labor unions and their difficulty in making inroads with white-collar workers reconfirms to the unions the need for an adversarial posture with management. Those who seek fundamental change in the way U.S. business operates believe that the NLRA must be amended to accommodate a major shift in economic organization.

ultimately inure to the benefit of the members of the local union."

Unions have also had to confront unfriendly state governments. In 2003 the Idaho Legislature passed a law prohibiting state and local governments from making union payroll deductions for political activities. These activities included "electoral activities, independent expenditures, or expenditures made to any candidate, political party, political action committee or in support or against any ballot measure." Unions in Idaho objected to this change, as it would make the collection of these types of dues very difficult and costly. In *Ysursa v. Pocatello Education Association*, U.S. , 129 S.Ct. 1093, L.Ed.2d (2009), the U.S. Supreme Court upheld the state law. The Court ruled that Idaho was under no obligation to aid the unions in their political activities and the state's decision not to do so was not "an abridgment of the union's speech."

Changing Labor-Management Relations

For most of the history of U.S. labor-management relations, employers and labor unions have seen each other as adversaries. Federal labor law has been shaped by this adversarial relationship, yet shifts in the structure of the U.S. economy have led to more cooperation. In the 1980s unions agreed to givebacks, in which employees agree to reduced wages and benefits in return for job security, particularly in the manufacturing industries. In response, employers have given unions a larger voice in the allocation of jobs and in the work environment itself.

When economic hardships fall on employers, these employers must often negotiate concessions with employees and the unions representing employees in order to save their businesses. After the SEPTEMBER 11TH ATTACKS in 2001, for instance, many airlines in the United States suffered devastating economic downturns. Many of these airlines were forced to negotiate concessions from unions representing airline employees in order to avoid BANKRUPTCY. When the U.S. economy went into a steep decline in the fall of 2008, the three major U.S. automakers, General Motors, Ford, and Chrysler, suffered a precipitous drop in sales. General Motors and Chrysler secured multibillion-dollar loans from the federal government, and as a condition, the unions had to agree to givebacks for current and retired union members.

Since the 1980s, innovations in corporate management that advocate teamwork, quality circles, and total quality management (TQM) have led to legal disputes and questions about the continued vitality of the adversarial model of labor-management relations. Under the NLRA, sections 2(5) and 8(A)(2), employers are prohibited from creating employer-dominated company unions. This prohibition was included in the original NLRA because employers had created sham unions that promised representation for workers but in fact toed the company line.

With the beginning of TQM and quality circles in the late 1980s, some employers have attempted to reinvent the workplace by empowering all levels of workers to help make decisions, instead of delegating this task to a set of managers. The creation of quality circles and employee committees has run afoul of the NLRA provision against employer-created unions. In *Electromation,* 309 N.L.R.B. 990 (1992), the board held that the company's "action committee" was a labor organization involved with and dominated by the company, in violation of sections 2(5) and 8(A)(2). Electromation was a nonunion company. In *E. I. du Pont de Nemours & Co.,* 311 N.L.R.B. 893 (1993), the board considered identical issues in a union-organized company. The board ruled that a series of safety and fitness committees created by du Pont were illegal under the NLRA. These cases illustrate the skepticism of some unions about the true intentions of management and the difficulty in adjusting to change in some areas of labor law.

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LABOR UNION

An association, combination, or organization of employees who band together to secure favorable wages, improved working conditions, and better work hours, and to resolve grievances against employers.

The history of labor unions in the United States has much to do with changes in technology and the development of capitalism. Although labor unions can be compared to European merchant and craft guilds of the Middle Ages, they arose with the factory system and the Industrial Revolution of the nineteenth century.

The first efforts to organize employees were met with fierce resistance by employers. The U.S. legal system played a part in this resistance. In *Commonwealth v. Pullis* (Phila. Mayor's Ct. 1806), generally known as the *Philadelphia Cordwainers*' case, bootmakers and shoemakers of Philadelphia were indicted as a combination for conspiring to raise their wages. The prosecution argued that the common-law doctrine of criminal conspiracy applied. The jury agreed that the union was illegal, and the defendants were fined. From that case came the labor conspiracy doctrine, which held that collective (as distinguished from individual) bargaining would interfere with the natural operation of the marketplace, raise wages to artificially high levels, and destroy competition. This early resistance to unions led to an adversarial relationship between unions and employers.

Between 1806 and 1842 the labor conspiracy doctrine was applied in a handful of cases. Then, during the 1840s, U.S. courts began to question the doctrine. The most important case in this regard was *Commonwealth v. Hunt,* 45 Mass. (4 Met.) 11, 38 A.M. Dec. 346 (Mass. 1842), in which Chief Justice LEMUEL SHAW set aside an indictment of members of the bootmakers' union for conspiracy. Shaw agreed with employers that competition was vital to the economy but concluded that unions were one way of stimulating competition. As long as the methods they used were legal, unions were free to seek concessions from employers. By the end of the nineteenth century, courts generally held that strikes for higher wages or shorter workdays were legal.

Despite the decline of the labor conspiracy theory, unions faced other legal challenges to their existence. The labor injunction and prosecution under antitrust laws became powerful weapons for employers who were involved in labor disputes. In an 1896 case, *Vegelahn v. Guntner,* 167 Mass. 92, 44 N.E. 1077, the highest court in Massachusetts upheld an injunction that forbade peaceful picketing outside the employer's premises.

The first national labor federation to remain active for more than a few years was the Noble Order of the Knights of Labor. It was established in 1869 and had set as goals the eight-hour workday, equal pay for equal work, and the abolition of child labor. The Knights of Labor grew to 700,000 members by 1886 but went into decline that year with a series of failed strikes. By 1900 it had disappeared.

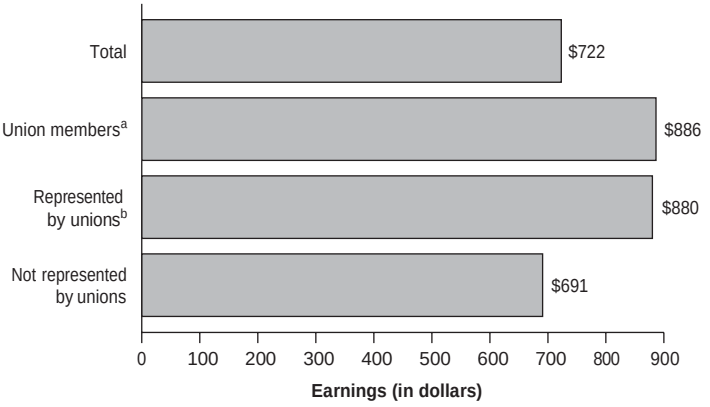
Labor unions nevertheless gained strength in 1886 with the formation of the American Federation of Labor (AFL). Composed of 25 national trade unions and numbering over 316,000 members, the AFL was a loose CONFEDERATION of autonomous unions, each with exclusive rights to deal with the workers and employers in its own field. The AFL concentrated on pursuing achievable goals such as higher wages and shorter hours, and it renounced identification with any political party or movement. Members were encouraged to support politicians who were friendly to labor, whatever their party affiliation.

Following the passage of the SHERMAN ANTITRUST ACT in 1890 (15 U.S.C.A. §§ 1 et seq.), which prohibited combinations in restraint of trade, courts punished and enjoined labor practices that were considered wrongful. In the *Danbury Hatters* case (*Loewe v. Lawlor,* 208 U.S. 274, 28 S. Ct. 301, 52 L. Ed. 488 [1908]), the U.S. Supreme Court upheld the application of the act to an appeal that involved a labor publication for a general boycott of named nonunion employers. In 1911, in *Gompers v. Buck's Stove & Range Co.,* 221 U.S. 418, 31 S. Ct. 492, 55 L. Ed. 797, the Court upheld an injunction against a union that had placed the name of the employer on the AFL "We Don't Patronize" list, which was a call for a boycott of the employer.

Opposition to labor unions was particularly intense during the late nineteenth century. Several unsuccessful strikes in the 1890s demonstrated the power of companies to crush unions. In 1892, steelworkers struck against the Carnegie Steel Company's Homestead, Pennsylvania, plant. The company hired private guards to protect the plant, but violence broke out. The strike failed, and most of the workers quit the union and returned to work. In 1894 members of the American Railway Union struck the Pullman Palace Car Company, which made railroad cars. The federal government sent in troops to end the strike.

Despite these setbacks, labor unions gradually increased their political power at the

Median Usual Weekly Earnings, by Union Affiliation, in 2008



[a]Members of a labor union or an employee association similar to a labor union.
[b]Members of a labor union or an employee association similar to a union as well as workers who report no union affiliation but whose jobs are covered by a union or an employee association contract.

SOURCE: U.S. Department of Labor, Bureau of Labor Statistics.

federal level. In 1914 Congress enacted the CLAYTON ACT, sections 6 (15 U.S.C.A. § 7) and 20 (29 U.S.C.A. § 52), declaring that human labor was not to be considered an article of commerce and that the existence of unions was not to be considered a violation of antitrust laws. In addition, the act prohibited federal courts from issuing injunctions in labor disputes except to prevent IRREPARABLE INJURY to property. This prohibition was absolute when peaceful picketing and boycotts were involved.

Employers had better success fighting unions by using the so-called yellow-dog contract. This agreement required a prospective employee to state that he or she was not a member of a union and would not become one. Although some states enacted laws that prohibited employers from requiring employees to sign this type of contract, the U.S. Supreme Court declared such statutes unconstitutional as an infringement of freedom of contract (*Coppage v. Kansas,* 236 U.S. 1, 35 S. Ct. 240, 59 L. Ed. 441 [1915]).

By 1920 trade unions had more than five million members. During the 1920s, however, the trade union movement suffered a decline, precipitated in part by a severe economic depression in 1921-22. Unemployment rose, and competition for jobs became intense. By 1929 union membership had dropped to 3.5 million.

The Great Depression of the 1930s caused more unemployment and a further decline in union membership. Unions responded with numerous strikes, but few were successful. Despite these reverses, the legal position of unions was enhanced during the 1930s. In 1932 Congress passed the NORRIS-LAGUARDIA ACT (29 U.S.C.A. §§ 101 et seq.), which declared yellow-dog contracts to be contrary to public policy and stringently limited the power of federal courts to issue injunctions in labor disputes. In cases in which an injunction still might be issued, the act imposed strict procedural limitations and safeguards in order to prevent more instances of abuses by the courts. The Norris-LaGuardia Act effectively ended "government by injunction" and has remained a FUNDAMENTAL LAW in labor disputes.

During the 1930s the AFL itself was in turmoil over the aspirations of the labor movement. The trade unions that dominated the AFL were composed of skilled workers who opposed organizing the unskilled or semiskilled workers on the manufacturing production line. Several unions rebelled at this refusal to organize and formed the Committee for Industrial Organization (CIO). The CIO aggressively organized millions of workers who labored in automobile, steel, and rubber plants. In 1938, unhappy with this effort, the AFL expelled the unions that formed the CIO. The CIO then formed its own organization, changed its name to Congress of Industrial Organizations, and elected John L. Lewis, of the United Mine Workers, as its first president.

U.S. labor relations were dramatically altered in 1935 with the passage of the National Labor Relations Act, also known as the WAGNER ACT (29 U.S.C.A. §§ 151 et seq.). For the first time, labor unions were given legal rights and powers under federal law. The act guaranteed the right of COLLECTIVE BARGAINING, free from employer domination or influence. It made it an unfair labor practice for an employer to interfere with employees in the exercise of their right to bargain collectively; to interfere with or to influence unions; to discriminate in hiring or firing because of an employee's union membership; to discriminate against an employee who avails himself or herself of legal rights; or to refuse to bargain collectively.

The Wagner Act also established the NATIONAL LABOR RELATIONS BOARD, which has the power to investigate employees' complaints and to issue cease and desist orders. If an employer were to defy such an order, the board may ask a federal court of appeals for an enforcement order, or it could ask the court to review the cease-and-desist order. The board could conduct elections to determine which union should represent the employees in a bargaining unit and certify the union as their agent, and it could designate the bargaining unit.

The heart of the Wagner Act was section 7 (29 U.S.C.A. § 157), which stated the public policy that workers have the right to engage in self-organization, in collective bargaining, and in concerted activities in support of self-organization and collective bargaining. Armed with these rights, unions grew in membership and strength during the late 1930s and through WORLD WAR II.

A number of states reacted negatively to these legal changes by enacting laws that sought to restrict and lessen the power of unions. An antiunion backlash developed after WORLD WAR II, when strikes against the automobile industry and other large corporations reached record numbers. This reaction culminated in the passage of the LABOR-MANAGEMENT RELATIONS ACT of 1947, also known as the TAFT-HARTLEY ACT (29 U.S.C.A. §§ 141 et seq.). The Taft-Hartley Act amended section 7 of the Wagner Act, affirming the rights that had been formulated in 1935 but providing that workers shall have the right to *refrain from* any of the listed activities. Whereas the Wagner Act listed only employers' unfair labor practices, Taft-Hartley added unions' unfair labor practices. The act created the FEDERAL MEDIATION AND CONCILIATION SERVICE, which provides a method for addressing strikes that create a national emergency. It also banned the CLOSED SHOP, which requires an employer to hire only union members and to discharge any employee who drops union membership. Taft-Hartley effectively replaced the Wagner Act as the basic federal statute regulating labor relations.

In 1955 the AFL and CIO merged into a single organization, the AFL-CIO. The staunchly anti-communist AFL agreed to the merger only after the CIO had purged its organization of communists and supporters of communist ideals. George Meany was appointed the first president of the new organization.

In 1959 Congress enacted the Labor Management Reporting and Disclosure Act, also known as the LANDRUM-GRIFFIN ACT (29 U.S.C.A. §§ 401 et seq.). Title VII of the act contains many amendments to the Taft-Hartley Act, of which two are especially important. First, Landrum-Griffin made peaceful picketing of organizational or recognitional objectives illegal under certain circumstances. Second, it closed loopholes in the provisions of Taft-Hartley that forbadesecondary boycotts.

Other sections of Landrum-Griffin provided for a BILL OF RIGHTS for union members, financial disclosure requirements for unions and their officers, and safeguards in union elections. All of these matters concerned internal union practices, strongly suggesting that union corruption had become a problem. In fact, a 1957 congressional investigation of the Teamsters union had uncovered widespread corruption and had much to do with the introduction of these new statutory provisions.

Labor unions continued to thrive in the 1960s, as a robust economy relied on a large manufacturing industry to maintain growth. Although no comprehensive union legislation was enacted during that decade, the CIVIL RIGHTS Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C.A. §§ 2000a et seq.), made an important contribution to national labor policy. The act declared it an unfair labor practice for an employer or union to discriminate against a person by reason of race, RELIGION, color, sex, or national origin. Administration of this provision is vested in the EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC). Under the Civil Rights Act, if the EEOC is unable to achieve voluntary compliance, the person allegingdiscrimination is authorized to bring a CIVIL ACTION in federal district court. The 1972 amendment gave the EEOC the right to bring such an action. The effect of the law has been to desegregate many trade unions that maintained an all-white membership policy.

The union movement considerably improved working conditions for migrant workers in the late 1960s and the 1970s. The United Farm Workers, under the leadership of CESAR CHAVEZ, led successful boycotts and strikes against California growers, most notably against the wine-grape growers.

Many unions suffered, however, with an economic downturn in the 1970s and 1980s, and with the decline of well-paying manufacturing jobs. Automation of industrial processes reduced the number of workers who were required on assembly lines. In addition, many U.S. companies moved either to states that did not have a strong union background or to developing countries where labor costs were significantly lower. Union members became more concerned about job security than about higher wages, particularly in the manufacturing industry, and they agreed to concede salary and benefit givebacks. In return, unions sought greater labor-management cooperation and a larger voice in the allocation of jobs and in the work environment.

Union membership has also declined in response to a shift from blue-collar manufacturing jobs to white-collar service and technology

jobs. By the end of 2002 just 13.2 percent of the U.S. workforce claimed union membership, compared with a high of 34.7 percent in 1954.

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LACHES

A defense to an equitable action, that bars recovery by the plaintiff because of the plaintiff's undue delay in seeking relief.

Laches is a defense to a proceeding in which a PLAINTIFF seeks equitable relief. Cases in equity are distinguished from cases at law by the type of remedy, or judicial relief, sought by the plaintiff. Generally, law cases involve a problem that can be solved by the payment of monetary damages. Equity cases involve remedies directed by the court against a party.

Types of equitable relief include injunction, where the court orders a party to do or not to do something; declaratory relief, where the court declares the rights of the two parties to a controversy; and accounting, where the court orders a detailed written statement of money owed, paid, and held. Courts have complete discretion in equity, and weigh equitable principles against the facts of the case to determine whether relief is warranted.

The rules of equity are built on a series of legal maxims, which serve as broad statements of principle, the truth and reasonableness of which are self-evident. The basis of equity is contained in the maxim "Equity will not suffer an injustice." Other maxims present reasons for not granting equitable relief. Laches is one such defense.

Laches is based on the legal maxim "Equity aids the vigilant, not those who slumber on their rights." Laches recognizes that a party to an action can lose evidence, witnesses, and a fair chance to defend himself or herself after the passage of time from the date the wrong was committed. If the defendant can show disadvantages because for a long time he or she relied on the fact that no lawsuit would be started, then the case should be dismissed in the interests of justice.

The law encourages a speedy resolution for every dispute. Cases in law are governed by statutes of limitations, which are laws that determine how long a person has to file a lawsuit before the right to sue expires. Different types of injuries (e.g., tort and contract) have different time periods in which to file a lawsuit. Laches is the equitable equivalent of statutes of limitations. However, unlike statutes of limitations, laches leaves it up to the court to determine, based on the unique facts of the case, whether a plaintiff has waited too long to seek relief.

Real estate boundary disputes are resolved in equity and may involve laches. For instance, if a person starts to build a garage that extends beyond the boundary line and into a neighbor's property, and the neighbor immediately files a suit in equity and asks the court to issue an injunction to stop the construction, the neighbor will likely prevail. However, if the neighbor observes the construction of the garage on her property and does not file suit until the garage is completed, the defendant may plead laches, arguing that the neighbor had ample time to protect her property rights before the construction was completed, and the court may find it unfair to order that the garage be torn down.

The laches defense, like most of equity law, is a general concept containing many variations on the maxim. Phrases used to describe laches include "delay that works to the disadvantage of another," "inexcusable delay coupled with prejudice to the party raising the defense," "failure to assert rights," "lack of diligence," and "neglect or omission to assert a right."

v LAMAR, JOSEPH RUCKER

Joseph Rucker Lamar served as an associate justice of the U.S. Supreme Court from 1911 to 1916. Unlike many appointees to the Court, Lamar was not selected on the basis of a long political career. As an attorney and Georgia

Supreme Court judge, Lamar was recognized for his legal abilities.

Lamar was born in Ruckersville, Georgia, on October 14, 1857. His wealthy family provided generations of leadership in the community, and included Lucius Q. C. Lamar, who served as an associate justice of the U.S. Supreme Court from 1888 to 1893.

Lamar attended the University of Georgia and graduated from Bethany College in West Virginia in 1877. He then attended Washington and Lee Law School and was admitted to the Georgia bar in 1878. From 1880 to 1903, Lamar practiced law in Augusta, Georgia. He often represented corporations, including railroads, and argued several cases before the U.S. Supreme Court.

He served in the Georgia House of Representatives from 1886 to 1889. His legal abilities were used more directly when he was appointed to serve on a commission revising the Georgia code of state laws. CODIFICATION is a process of revising and reorganizing legislative laws into a coherent whole. Lamar mastered the highly technical process and revised the civil-law volume himself. The code was approved by the legislature in 1895.

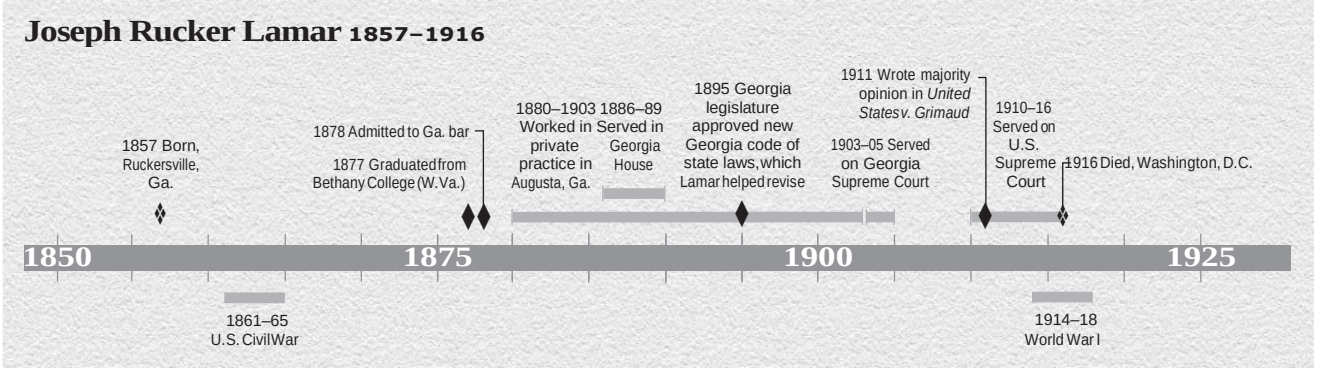
In 1903 he was appointed to the Georgia Supreme Court. He resigned in 1905 to return to his law practice.

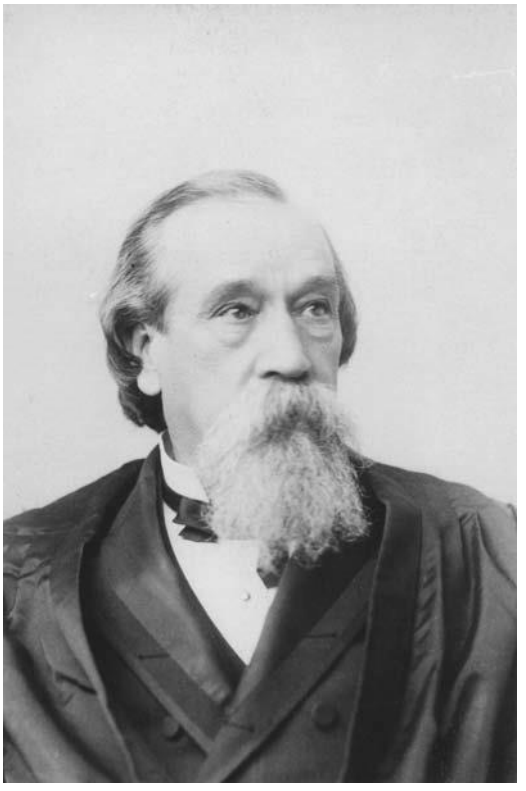
Lamar was surprised when President WILLIAM HOWARD TAFT, a Republican, appointed him to the U.S. Supreme Court in 1910. Lamar had met Taft the year before when the president was visiting Augusta, but was not well acquainted with him or his circle. In fact, Democrat WOODROW WILSON, who became president in 1912, was a childhood friend of Lamar's.

Joseph R. Lamar.
PHOTOGRAPH BY JULIAN LAMAR. COLLECTION OF THE SUPREME COURT OF THE UNITED STATES

During Lamar's brief term on the Court, interstate commerce and the growth of federal regulatory and administrative power were prime topics of legal dispute. Lamar adhered to the majority view in most cases. He wrote the majority opinion in *United States v. Grimaud,* 220 U.S. 506, 31 S. Ct. 480, 55 L. Ed. 563 (1911), which expanded the authority of the EXECUTIVE BRANCH to add details deliberately left open by congressional legislation. Lamar held that it was not an unconstitutional delegation of legislative power to allow administrators to exercise their discretion in filling in the details of laws.

Lamar died January 2, 1916, in Washington, D.C.





Lucius Q. C. Lamar. PHOTOGRAPH BY NAPOLEON SARONY. COLLECTION OF THE SUPREME COURT OF THE UNITED STATES.

v LAMAR, LUCIUS QUINTUS CINCINNATUS

Lucius Quintus Cincinnatus Lamar served as an associate justice of the U.S. Supreme Court from 1888 to 1893. Lamar's public service, spanning almost 50 years, included both houses of Congress, the EXECUTIVE BRANCH, and the CONFEDERACY.

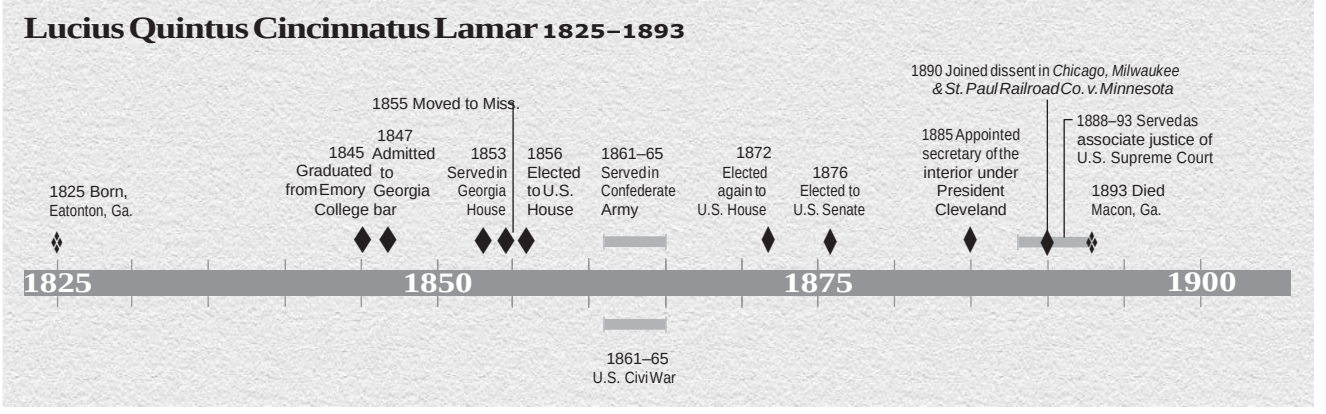
Lamar was born September 17, 1825, in Eatonton, Georgia, the son of a wealthy plantation owner. He graduated from Emory College in 1845 and then apprenticed in the law. He was admitted to the Georgia bar in 1847. In 1849 he moved to Oxford, Mississippi, where he taught mathematics at the University of Mississippi.

He briefly returned to Georgia, where he served in the Georgia House of Representatives in 1853. He relocated to Mississippi in 1855 and began building his political career. He was elected to the U.S. House of Representatives and served from 1857 to 1860, relinquishing his seat with the secession of the southern states in 1861.

Lamar played an important role in the 1861 Mississippi Secession Convention. Although he had doubts about the theory of secession from the Union, he was influenced by his father-in-law, Augustus Longstreet, an avowed separatist. At the convention Lamar drafted the ordinance of secession, which declared Mississippi no longer a part of the Union. He joined the Confederate militia and served as a colonel in the Mississippi regiment. He also acted in various diplomatic capacities for the Confederacy, and from 1864 to 1865, he served as JUDGE ADVOCATE of the Army of Virginia.

Following the war Lamar resumed his law practice and teaching career in Oxford. His teaching duties expanded to the University of Mississippi law school. In 1873 Lamar was again elected to the U.S. House of Representatives. In 1877 he was elected to the U.S. Senate. In 1885 President Grover Cleveland appointed Lamar secretary of the interior.

In 1887 President Cleveland nominated Lamar to the U.S. Supreme Court. Republican opponents fought the nomination, arguing that



Lamar lacked legal experience and that he was too old. The Senate narrowly approved his nomination, by a vote of 42–38, making Lamar the first southerner to join the Court since JOHN A. CAMPBELL in 1853, and the first Democrat since STEPHEN J. FIELD in 1862. He served on the U.S. Supreme Court from 1888 to 1893.

Lamar's tenure on the Court was spent under the leadership of Chief Justice MELVILLE W. FULLER. The Fuller Court reviewed the efforts of the federal government to regulate interstate commerce and curtail the power of monopolies and trusts. In most cases it agreed with business that the federal government had limited constitutional authority to regulate industry. Lamar concurred, adhering to a belief in the doctrine of FEDERALISM. This doctrine has many facets, including a fundamental assumption that the national government must not intrude on the power of the states to handle their affairs.

Lamar did not author any landmark majority opinions, as he generally received inconsequential cases. He joined in the dissent of Justice JOSEPH P. BRADLEY in *Chicago, Milwaukee & St. Paul Railroad Co. v. Minnesota,* 134 U.S. 418, 10 S. Ct. 462, 33 L. Ed. 970 (1890), which stated that legislatures, not courts, should determine the reasonableness of railroad rates and other public policy matters. Lamar died January 23, 1893, in Macon, Georgia.

LAME DUCK

An elected official, who is to be followed by another, during the period of time between the election and the date that the successor will fill the post.

The term *lame duck* generally describes one who holds power when that power is certain to end in the near future. In the United States, when an elected official loses an election, that official is called a lame duck for the remainder of his or her stay in office. The term *lame duck* can apply to any person with decision-making powers, but it is usually refers to presidents, governors, and state and federal legislators.

When a legislature assembles between election day and the day that new legislators assume office, the meeting is called a lame-duck session. On the federal level, under the TWENTIETH AMENDMENT to the U.S. CONSTITUTION, the Senate and the House of Representatives must convene on January 3 each year. Incoming legislators assume office that day, and outgoing legislators leave office that day. Thus, from the day after election day in November until late December, retiring and defeated legislators have time to pass more legislation.

Legislatures do not have to conduct lame-duck sessions. In fact, if many of their members will be new in the next legislative session, the idea of their defeated lawmakers voting on legislation may be criticized by the public—especially by those who voted for the incoming legislators. The issue of whether to conduct a session between mid-November and early January is usually decided by a vote of the legislators in office during the last session before the election. The legislature may elect to reconvene on a certain date, to adjourn at the call of the chair of either house or both houses, or to adjourn sine die (without planning a day to reconvene). Also, a lame-duck president or governor has the power to call a lame-duck session.

Lame-duck sessions may be called to pass emergency legislation for the immediate benefit or protection of the public during November or December. They also may be conducted for political purposes. For example, if a certain party stands to lose the presidency or governorship and seats in the new legislature, that party may seek to push through a few last pieces of legislation. Thus, lame-duck sessions can spawn hastily written legislation, and the finished product may be of dubious quality.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), also known as Superfund (42 U.S.C.A. § 9601 et seq.), is a piece of lame-duck legislation. This federal statute, which regulates the cleanup of toxic waste sites, was hurriedly passed by a lame-duck Congress and signed by lame-duck president JIMMY CARTER in December 1980. Congress crafted the statute with virtually no debate and under rules that allowed for no amendments. CERCLA is regarded as problem ridden by persons on all sides of the environmental debate.

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LAME-DUCK AMENDMENT

The popular name given to the Twentieth Amendment to the U.S. Constitution.

Senator GEORGE W. NORRIS proposed the amendment on March 2, 1932, as a way to shorten the period of time in election, or even-numbered, years during which members of Congress who had failed to be reelected (the lame ducks) would serve in office until their terms expired.

The handicap of a session of Congress with numerous lame ducks was particularly evident in December 1932. During the 13 weeks of that session of the Seventy-second Congress, 158 defeated members (out of a total of 431) served until the new Congress convened in March 1933. In the meantime the newly elected members, spurred by their recent electoral victories and the problems of a nationwide economic depression, had to wait inactive and unorganized until the term of the old Congress expired.

The Norris proposal was ratified by the requisite number of state legislatures on January 23, 1933, and took effect on October 15 of that year. The new amendment stipulated that the terms of all members of Congress begin on January 3. It also required Congress to convene on January 3 each year and for the president and vice president to be inaugurated on January 20 rather than in March. Two sections of the amendment also clarified the problem of presidential succession under certain conditions.

LAND GRANT

A conveyance of public property to a subordinate government or corporation; a muniment of title issued by a state or government for the donation of some part of the public domain.

A land grant, also known as *land patent,* was made by the U.S. government in 1862, upon its grant to the several states of 30,000 acres of land for each of its senators and representatives serving in Congress. The lands were subsequently sold by the states and, through the proceeds, colleges were established and maintained. Such colleges, which are devoted mainly to teaching agricultural subjects and engineering, are known as *land grant colleges.*

LAND-USE CONTROL

Activities such as zoning, the regulation of the development of real estate, and city planning.

Land-use controls have been a part of Western civilization since the Roman Empire in 450 B.C. promulgated regulations concerning setback lines of buildings from boundaries and for distances between trees and boundaries. Regulations on the use of land existed in colonial America, but the demand for public regulation of real estate development did not become significant until the twentieth century. As the United States shifted from a rural to an urban society, city governments sought to gain control over the location of industry, commerce, and housing. New York City adopted the first comprehensive zoning ordinance in 1916. By the 1930s, zoning laws had been adopted in most urban areas.

The development of master plans and zoning regulations became an accepted part of urban life. Following WORLD WAR II, housing patterns shifted from the inner city to suburbia. The suburbanization of the United States led to the creation of discrete housing developments. Growing suburban communities began imposing regulations on the amount and type of housing that would be allowed within their municipal boundaries. Beginning in the 1970s, as urban sprawl created problems that crossed municipal borders, attention turned to regional planning. Concerns about the environment and historic preservation led to further regulation of land use.

Federal, state, and local governments, to varying degrees, regulate growth and development through statutory law. Nevertheless, a majority of controls on land stem from actions of private developers and government units.

The use of land can be affected by judicial determinations that frequently arise in one of three situations: (1) suits brought by one neighbor against another, (2) suits brought by a public official against a neighboring landowner on behalf of the public at large, and (3) suits involving individuals who share ownership of a particular parcel of land.

Private Land-Use Restrictions

A number of restrictions on land are a result of actions by government units. Many restrictions, however, are created by land developers. Such devices take several forms and can be either positive or negative in nature. They include defeasible fees, easements, equitable servitudes, and restrictive covenants.

Defeasible Fees In defeasible fee estates, the grantor gives land to the grantee, subject to certain conditions. For example, A might convey a parcel of land to B, provided that it be used for school purposes. The effect of the defeasible fee is that it restricts the use of the property by the possessor. Failure to observe the conditions causes the property to revert to the grantor. Estates of this type are no longer favored in most jurisdictions, because they make the transfer of land cumbersome and do not take into account unforeseen situations. The limited scope of defeasible fees makes them of limited value.

Easements Easements are rights to use the property of another for particular purposes. One common type of easement in current use is the affirmative grant to a telephone company to run its line across the property of a private landowner. Easements also are now used for public objectives, such as the preservation of open space and conservation. For example, an easement might preclude someone from building on a parcel of land, which leaves the property open and thereby preserves a park for the public as a whole.

Equitable Servitudes Equitable servitudes are land-use restrictions enforceable in a court of equity. They are created by the language of the promise in the form of a covenant (agreement) between two individuals. For example, suppose A owns a parcel of land on the edge of a city and subdivides the parcel into ten lots, numbered 1 to 10. A then records a declaration of restrictions, limiting each of the ten lots to use solely for family dwelling, providing that only a single-family house may be built on each lot. A sells the lots to ten people, and each deed contains a reference to the declaration of restrictions by record book and page number, coupled with a provision that the person purchasing the lot and all successive purchasers of the lot are bound by the restrictions.

Restrictive Covenants Restrictive covenants are provisions in a deed limiting the use of the property and prohibiting certain uses. They are similar in effect to equitable servitudes, but restrictive covenants run with the land because the restrictions are contained in the deed. Restrictive covenants are typically used by land developers to establish minimum house sizes, setback lines, and aesthetic requirements thought to enhance the neighborhood. The legal differences between equitable servitudes and restrictive covenants are less important today, as courts have merged the terms into one general concept.

The Master Plan and Official Map

Municipal land-use regulation begins with a planning process that ultimately results in a comprehensive or master plan followed by ordinances. These ordinances involve the exercise of the municipality's police power through zoning, regulation of subdivision developments, street plans, plans for public facilities, and building regulations. Many states provide for the creation of an official map for a municipality. The map shows the location of major streets, existing and projected public facilities, and other such landmarks. Developers must plan their subdivisions in accordance with the official map.

The master plan takes into account the location and type of activities occurring on the land and the design and type of physical structures and facilities serving these activities. Long-range projections of population and employment trends are considered. The planning process is designed to enable a locality to plan for the construction of schools, streets, water and sewage facilities, fire and police protection, and other public amenities, and the private use of land is controlled by zoning and subdivision ordinances enacted in compliance with the plan.

Since the 1970s more emphasis has been placed on regional and statewide planning.

Planned Communities: Read the Fine Print

One in eight people in the United States live in planned communities, which include townhouses, condominiums, co-ops, and entire real estate developments containing single-family homes. A common feature of all planned communities is a homeowner association, which oversees the maintenance and administration of the real estate, especially the common areas shared by all owners. A board of directors of the association, elected by the property owners, enforces the community's rules.

Planned communities often impose a number of restrictions on their members. These are typically contained in the real estate deed, which becomes a contract between the property buyer and the community. Purchasers are bound by these restrictions whether or not they read or understood them. The restrictions may cover a wide range of architectural and aesthetic limitations, and are believed to increase the value of property in the community. Unwary residents may find the limitations extreme.

Residents of planned communities have faced limitations on things such as paint colors, pets, sports and sporting equipment, and outdoor decorations. Under such restrictions homeowners have been threatened with fines for stringing Christmas lights, taken to court because their dog was too heavy, and prohibited from throwing a Frisbee. Association dues can be used to pay for a lawsuit enforcing a restriction, and some bylaws require the defendant homeowner to reimburse the association's legal fees.

B

These planning initiatives have often been based on environmental concerns. Regional planning has become attractive to urban areas that cross state lines. Instead of dealing with two or three competing and conflicting local plans, neighboring municipalities can refer to a regional plan that offers one comprehensive vision and one set of regulations.

Zoning

Zoning is the regulation and restriction of real property by a local government. It is the most common form of land-use regulation, as municipalities rely on it to control and direct the development of property within their borders, according to present and potential uses of the property. Zoning involves the division of territory based on the character of land and structures and their fitness for particular uses. Consideration is given to conserving the value of property and encouraging the most appropriate use of land throughout a particular locality.

A municipality's power to enact zoning regulations is derived from the state in an exercise of its police power. Police power is the inherent power of the government to act for the WELFARE of those within its jurisdiction. The power to impose zoning restrictions is conferred on a municipality by a state ENABLING STATUTE.

Zoning laws are intended to promote the health, safety, welfare, convenience, morals, and prosperity of the community at large, and are meant to enhance the GENERAL WELFARE rather than to improve the economic interests of any particular property owner. They are designed to stabilize neighborhoods and preserve the character of the community by guiding its future growth.

The essential purpose of zoning is to segregate residential, commercial, and industrial districts from one another. Within these three main types of districts there may be additional restrictions as to population density and building height. The use of property within a particular district is, for the most part, uniform. For example, if a district is zoned for industrial use, residential buildings are not normally permitted there. However, if a residential building predates the zoning plan, it is

permitted to remain. This exception is called a nonconforming use.

Municipalities exercise wide discretion in fixing the boundaries of commercial and industrial districts. A number of ordinances have been enacted to protect residential zones from encroachment by gasoline stations, public parking facilities, businesses selling intoxicating liquors, and factories that emit smoke or odors.

When enacting zoning ordinances, a municipality takes many factors into consideration. The most significant are the density of the population; the site and physical attributes of the land involved; traffic and transportation; the fitness of the land for the permitted use; the character of neighborhoods in the community; the existing uses and zoning of neighboring property; the effect of the permitted use on land in the surrounding area; any potential decrease in property values; the gain to the public at large weighed against economic hardships imposed on individual property owners; and the amount of time that the property has remained unimproved, reviewed in the context of land development in the area as a whole.

Exclusionary zoning is the practice of using the zoning power to develop the parochial interests of a particular municipality at the expense of surrounding regions. Its purpose is to advance economic and social segregation. Exclusionary zoning involves using zoning to take advantage of the benefits of regional development without being forced to bear the burdens of such development, as well as using zoning to maintain particular municipalities as enclaves of affluence or social homogeneity. Both practices have been strongly condemned in the courts, since they violate the principle that municipal zoning ordinances should advance the general welfare. Exclusionary zoning takes various forms, such as requirements setting a minimum lot size or house size, the prohibition of multifamily housing, and the prohibition of mobile homes.

A municipality has a legitimate interest in ensuring that residential development proceeds in an orderly and planned manner and that the burdens on municipal services do not increase faster than the ability of services to expand. It must also preserve exceptional environmental and historical features. Increasingly, however, exclusionary techniques have come under fire as unfair ways of preventing the creation of economically, racially, and socially diverse communities.

Nuisance

A nuisance is an unreasonable, unwarranted, or illegal use by an individual of his or her own property, that in some way injures the rights of others. A nuisance action ordinarily arises between two neighboring landowners or is brought by a government attorney. The person initiating the nuisance action seeks to control or limit the use of the land that is creating the nuisance. Nuisance law is based on the principle that no one has the right to use property in a manner such as to injure a neighbor.

A private nuisance arises when there is an interference with the use or quiet enjoyment of land without an actual TRESPASS or physical invasion. For example, A might sue B, alleging that constant loud noises by B amount to a nuisance to A and A's property, which may or may not adversely affect other property in the area.

A public nuisance extends further than a private nuisance, because it adversely affects the health, morals, safety, welfare, comfort, or convenience of the general public. Statutes in many states precisely define what constitutes a public nuisance. Common examples are water and air pollution, the storage of explosives under dangerous conditions, houses of PROSTITUTION, the emission of bad odors or loud noises, and the obstruction of public ways.

A nuisance can be both private and public, since certain activities may be sufficient to constitute a public nuisance while still substantially interfering with the use of the adjoining land to such a degree that a landowner may sue on the ground that a private nuisance is present. Private nuisance refers to the property interest affected, not to the type of conduct.

Nuisances may occur in rural as well as urban areas, but they become more obvious when the area is well established as residential in nature. The fact that an activity of a certain type is permitted in an area under the zoning ordinance does not mean that it may not be stopped if it develops into a nuisance. If an otherwise legitimate activity threatens the

IN FOCUS

The West Wrestles with Washington

Beginning in the 1990s, a number of controversial clashes over federal authority have concerned the use of federally owned land. One such struggle, between the Clinton administration and western states, for example, covered a variety of issues: fees for ranchers; water, timber, and mining rights; and environmental restrictions on land use. Each issue was part of a more fundamental question: Who has authority to regulate use of the land—federal or local officials? Challenging the administration in Congress and fighting the federal government in court, a broad coalition of western governors, lawmakers, and business interests sought autonomy and relief from outside regulation. More than 60 western counties asserted legal authority over federal lands within their borders. As political tensions heightened, acts of violence aimed at federal officials raised the stakes in what the media called the county supremacy movement, and the U.S. JUSTICE DEPARTMENT brought suit to stop it.

The western conflict had been simmering for two decades. A rise of environmental concerns in the 1970s had created a strong lobby that pressed for stricter controls on land use, a demand especially relevant to the millions of acres of federal land in the U.S. West. This development affected western ranchers, who lease federally owned land for their livestock. Early on, environmentalists spurred the passage of the 1971 Wild Horse and Burro Act, 16 U.S. C.A. § 1332 et seq. This law protected wild horses, but at the same time caused deterioration to land on which livestock graze. Private landowners also chafed under the ENDANGERED SPECIES ACT (ESA) (16 U.S.C.A. § 1538(a)(1)(B)). Passed in 1973 to preserve specific vanishing species, the ESA restricted their right to develop their land.

Western quarrels with federal management of the land grew into the so-called Sagebrush Rebellion of the late 1970s and early 1980s. This was an attempt by several states to wrest control over land management from the federal government and turn it over to state authorities. The rebels argued that local control would mean less bureaucracy and more responsiveness than could be offered by the federal Bureau of Land Management (BLM), which manages 177 million acres in the western states. Some went further. For instance, in 1979 Nevada declared legislation that the state owned and had control and jurisdiction over all "public lands" within it (Nev. Rev. Stat. §§ 321.596–.599). This claim was largely symbolic in that it excluded federal land such as parks, forests, and wildlife refuges.

Although the rebellion gained slight support from the Reagan administration—whose anti-regulatory stance allowed grazing on nearly all public lands—it failed to lead to the transfer of power that its proponents wanted. Discontent among western political and business leaders remained.

The conflict came to a new crisis in the early 1990s. The election of President BILL CLINTON in 1992, and his choice of the environmentally minded Bruce Babbitt as interior secretary, quickly heightened among environmentalists expectations for tougher restrictions. The administration promised broad rangeland reforms. It favored raising the grazing fees charged to cattle ranchers from $1.86 to $4.28 per animal unit month (AUM) (the amount of forage needed to feed one animal for a month) in order to bring the fees closer to the average $8.00 to $15.00 per AUM charged on private land. The proposed reforms also asserted that the federal government would hold title to any water sources developed on federal lands. They imposed more stringent ecological standards and called for ranchers who abused land to be punished by measures that ranged from reductions in the length of grazing permit terms to outright disqualification from the permit program.

The proposals drew praise from environmentalists. They hailed the administration for trying to bring needed protection to western ecological systems and for trying to cut what they argue is a federal subsidy to ranchers. The National Wildlife Federation called the reforms long overdue. To more radical groups like Rest the West, whose slogan was Cattle-Free by '93, the Clinton administration's efforts were a step toward eliminating ranching on public lands altogether.

But among western business and political interests, the proposals caused an uproar. Opponents called the increase in grazing fees unfair, arguing that it failed to take into account that the more expensive private lands offer ranchers superior grazing as well as improvements such as fences and water sources. Industry representatives claimed the fee hike would crush already struggling ranchers. The American Sheep Industry Association, for example, estimated that a

health or safety of the community in general, it can be classified as a public nuisance. Usually, however, very little relief is available for someone who intentionally locates in an industrial area.

Waste

Waste laws prohibit the unreasonable or improper use of land by someone who is in rightful possession of the land. The most

quarter of its members would be driven out of business, at a loss of $1.68 billion in revenues. In public statements and at meetings throughout the West, ranchers and politicians decried the effort as a giveaway to environmentalists by out-of-touch federal bureaucrats.

The administration tried several times to make the reforms stick. President Clinton originally wanted to make higher grazing fees part of his first budget, but western lawmakers protested. The administration compromised on water issues and the size of the grazing fee, but to no avail. In October 1993 an attempt to pass the reform package was blocked by several filibusters in the U.S. Senate. Although opponents declared victory, Babbitt plowed ahead with a plan to bring the reforms into effect through changes in BLM regulations. Known as Rangeland Reform '94, the revised regulations were put into place in February 1995 after the interior secretary conducted numerous public meetings with ranchers and environmentalists (BLM Grazing Administration Rules and Regulations [60 Fed. Reg. 9894]). The sharp fee hike was shelved in favor of a customary twelve-cent annual increase. Another significant compromise was the establishment of grassroots resource advisory councils, made up of ranchers, environmentalists, and other citizens who would advise the BLM on policy decisions.

The issuance of new regulations, even sweetened by compromise, hardly quelled western opposition. While fighting the rangeland reform battle, western lawmakers had also grappled with the administration over the issue of mining rights. The dispute centered on an 1872 law that allowed mining companies to snap up federal land at $2.50 to $5.00 an acre (the Mining Act of 1872 [30 U.S.C. A. § 22]). The administration said foreign companies were exploiting the law, originally intended to help small prospectors. Nevertheless, western states refused to budge on demands that a higher ROYALTY fee be imposed to compensate the federal government for the incredibly low price for land. Any increase, they said, would cost their states revenue from the mining industry.

Meanwhile, a more radical element in the western conflict had appeared. Between 1991 and 1995, nearly 60 western counties asserted in ordinances that they—not the federal government—had control over federal lands. As this trend grew and became known as the county supremacy movement, the *National Law Journal* noted that it took two legal forms. One was typified by Boundary County, Idaho, whose 1991 ordinance cited local custom and culture as reasons for requiring all federal and state agencies to comply with its land-use policy plan. The second originated in Nye County, Nevada, where two resolutions in 1993 declared that the county owned all public lands and public roads.

Nye County became a focal point of the new movement. Many of its constituents openly resented federal control of nearly 87 percent of the county's land. In 1994 it became the scene of concern after Dick Carver, a Nevada rancher and Nye County commissioner, used a bulldozer to plow open a forest road over the objections of an armed U.S. Forest Service agent. The incident made Carver a sort of folk hero, and he began delivering lectures in more than 20 states. Hostilities erupted in Nye County, and bombs in New Mexico and Nevada and gunshots in California were aimed at federal employees.

Determined to stop the rebellion and reassert federal authority over federal lands, the U.S. DEPARTMENT OF JUSTICE joined one lawsuit and filed another. In March 1996 it won both. In the first, *Boundary Backpackers v. Boundary County,* 913 P.2d 1141, the Idaho Supreme Court invalidated Boundary County's ordinance as unconstitutional. In the second, the U.S. district court in Nevada struck down Nye County's ordinance (*United States v. Nye County,* 920 F.Supp. 1108).

In the new century, one of the biggest land-use battles in the West has been over the proposed use of Yucca Mountain in Nevada as the storage site for the nation's nuclear waste. The plan is to build a nuclear waste repository facility 1,000 feet below the mountain. While the Congress and the president signed off on the decision to use the mountain in 2002, the state of Nevada has filed a lawsuit to stop it. Landowners and Native American tribes have joined this legal fight, and it was expected to be years before the courts made a final determination on this issue. Despite the federal government's victories on some fronts, the West's desire for greater independence and its distrust of federal authority indicate the likelihood of further struggles.

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common relationship between waste-law litigants is that of LANDLORD AND TENANT, but waste laws also apply to grantors and grantees, and to owners of land for life and their successors.

Waste comes in four forms: voluntary, permissive, ameliorating, and equitable. An intentional act that diminishes the value of land constitutes voluntary waste. Permissive waste is the omission of expected maintenance to land

or its property. Ameliorating waste is a land use that is not authorized by the owner but nevertheless improves the value of the property. Finally, if a use is inconsistent with the land's highest use, a person holding a FUTURE INTEREST in the land may bring an equitable waste action against the possessor.

A successful action for waste usually results in the awarding of money damages, but courts sometimes issue an injunction. This means that the landowner can obtain a court order preventing the possessor from engaging in wasteful acts. If a landowner can show a substantial likelihood of harm if such an order is not issued, and that no other satisfactory legal remedies exist, an injunction may be issued.

Eminent Domain

EMINENT DOMAIN is the right or power of a unit of government or a designated private individual to take private property for public use, following the payment of a fair amount of money to the owner of the property. The FIFTH AMENDMENT to the U.S. CONSTITUTION provides, "[N]or shall private property be taken for public use, without just compensation." This statement is commonly referred to as the Takings Clause. The theory behind eminent domain is that the local government can exercise such power to promote the general welfare in areas of public concern, such as health, safety, or morals.

Eminent domain may be exercised by numerous local government bodies, including drainage, levee, or flood control agencies; highway or road authorities; and housing authorities. For example, if a city wishes to build a new bridge, and the land it needs is occupied by 60 houses, it may use its eminent domain power to take the 60 houses, remove the buildings, and build the bridge. The government must make JUST COMPENSATION to the affected property owners, who are entitled to the FAIR MARKET VALUE of the property.

The power of eminent domain is exercised through condemnation proceedings. These proceedings establish the right to take the property by the government or designated private individual (usually public utilities) and the amount of compensation to be paid for the property.

The U.S. Supreme Court has examined the relation between land-use regulations and the Takings Clause. In *Lucas v. South Carolina Coastal Council,* 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed. 2d 798 (1992), the Court held that a total deprivation of economic use amounts to a taking for which damages may be awarded. *Lucas* involved a developer who had purchased coastal lots to construct two single-family residences. A South Carolina law, which sought to protect the eroding shoreline, prohibited him from building anything except wooden walkways and a wooden deck. The U.S. Supreme Court agreed that he was entitled to compensation because this was a regulatory taking.

In *Dolan v. City of Tigard,* 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994), the Supreme Court limited government power to take private property for the public good. It ruled that a city cannot force a store owner to make part of the owner's land a public bike path in exchange for a permit to build a larger store. The decision makes it more difficult for municipalities to require that land developers give up for public purposes part of their property, including sidewalks, access roads, and parks. If the government needs the land, it must compensate the owner.

The Supreme Court made a landmark decision in *Kelo v. City of New London*, 545 U.S. 469,125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005), when it held that government may seize private property for the purpose of economic development. The city council of New London, Connecticut, approved a development plan that called for the acquisition of several parcels of private property. Where owners were unwilling to sell the property, the city voted to use eminent domain to acquire the property. The development was expected to increase tax revenue and jobs in the area, but some of the property that would be condemned would not be open to the general public. When some owners objected to condemnation and sued, the state supreme court and the U.S. Supreme Court ruled that the definition of "public purpose" was broad enough to include economic development. The decision proved controversial, leading most states to enact laws that prohibit the use of eminent domain for private economic development.

Historic Districts

Since the 1950s more attention has been paid to the preservation of historic districts. Purchase or condemnation by the government for

Dust, Noise, Smells, But Not a Nuisance

Homeowners have a legitimate right to the quiet enjoyment of their property. Nevertheless, when that quiet enjoyment is disturbed by the activities of another property owner, it may be difficult to have those activities declared a private or public nuisance.

In *Karpiak v. Russo,* 450 Pa. Super. 471, 676 A.2d 270 (1996), the Pennsylvania Superior Court ruled that a landscaping supply business that produced dust, loud noises, and unpleasant smells in an area that contained homes as well as businesses was not a private nuisance. The decision illustrates the need for those complaining of a nuisance to prove significant harm.

The landscaping supply company was established in 1984, when the zoning law classified the location as business property. The area was rezoned in 1993, making the area residential. The company sold topsoil, shredded bark, compost, sand, and river rock from spring to late fall. Nearby homeowners complained of dust blowing into their yard and home; noise from trucks, backhoes, and payloaders; and smells from the compost.

The court rejected these claims of nuisance. It first noted that the company had lawfully complied with the zoning ordinance at the time it started the business. There were other businesses on the same street. Just because the neighborhood had been rezoned did not prohibit the continued existence of the landscape business.

More significantly, the court found that none of the complaining parties had suffered any significant harm. Most of the parties worked weekdays and were absent from the neighborhood when the landscape business was in operation. Aside from one person who had to clean his car and outside furniture, no one claimed any damages from the operation of the business. The court concluded that occasional personal discomfort or annoyance did not establish a serious level of harm that could be defined as a private nuisance. People who reside in neighborhoods with businesses close by will sometimes find their comfort subordinated to the commercial needs of business.

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historic preservation purposes is valid. More important, acts establishing historic districts have been upheld as promoting the public welfare. State and local preservation laws have been bolstered by the federal National Historic Preservation Act of 1966 (16 U.S.C.A. § 47 et seq.), which provides a procedure for registering buildings as historic landmarks. Apart from establishing a national register of historic sites, the act provided for the protection and restoration of historic sites and districts.

Environmental Controls

ENVIRONMENTAL LAW and regulation have significantly affected land development. With the passage of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (NEPA) (42 U.S.C.A. § 4321 et seq.), the public and private sectors were obligated to conform to certain environmental standards. The interrelationship of the objectives of NEPA and more traditional forms of land-use control under police power are illustrated by NEPA's stated objectives, which relate not only to the environment but also to ensuring aesthetically pleasing surroundings, protecting health and safety, preserving historic and cultural heritage, and preserving natural resources.

NEPA requires that every federal agency submit an environmental impact statement (EIS) with every legislative recommendation or program proposing major federal projects that will most likely affect the quality of the surrounding environment. An EIS may be required for projects such as the rerouting of an interstate highway, construction of a new dam, or expansion of a ski resort on federally owned land.

The EIS is a tool to assist in decision making, providing information on the positive

and negative environmental effects of the proposed undertaking and alternatives. The EIS must also examine the effect of not implementing the proposed action. This "no-action" alternative may result in the agency's continuing to use existing approaches. Although NEPA requires agencies to consider the environmental consequences of their actions, it does not force them to take the most environmentally sound alternative, nor does it dictate that they pursue the least expensive option.

The effect of environmental policies on land use has been substantial. State governments followed the lead of the federal government and passed statutes that create water and air pollution control agencies. Some states require an EIS, and a number have comprehensive legislation.

Land-Use Conflicts

Government and judicial bodies usually attempt to make land-use policies responsive to emerging concerns and developing needs. Conflicts result from situations in which localities attempt to block or ignore those needs, or from situations in which the response is challenged as an overextension of the police power. The complexity of urban problems and the growth of urban areas place constant tension on the land-use process.

Urban land-use is not all that causes tension between the government and landowners. Decisions to set aside undeveloped or rural land for governmental use causes controversy as well. One example of this practice was the decision by the federal government in 2002 to set aside Yucca Mountain, in Nevada, for storing all U.S. nuclear waste. Various landowners and Native American tribes, as well as the state of Nevada, filed lawsuits attempting to stop this use of Yucca Mountain. In March 2009, the Obama Administration announced its intention to abandon federal plans for Yucca Mountain. With the population of states such as Nevada growing rapidly, resulting in a decrease of available land, these wrangles over land use are anticipated to become more frequent.

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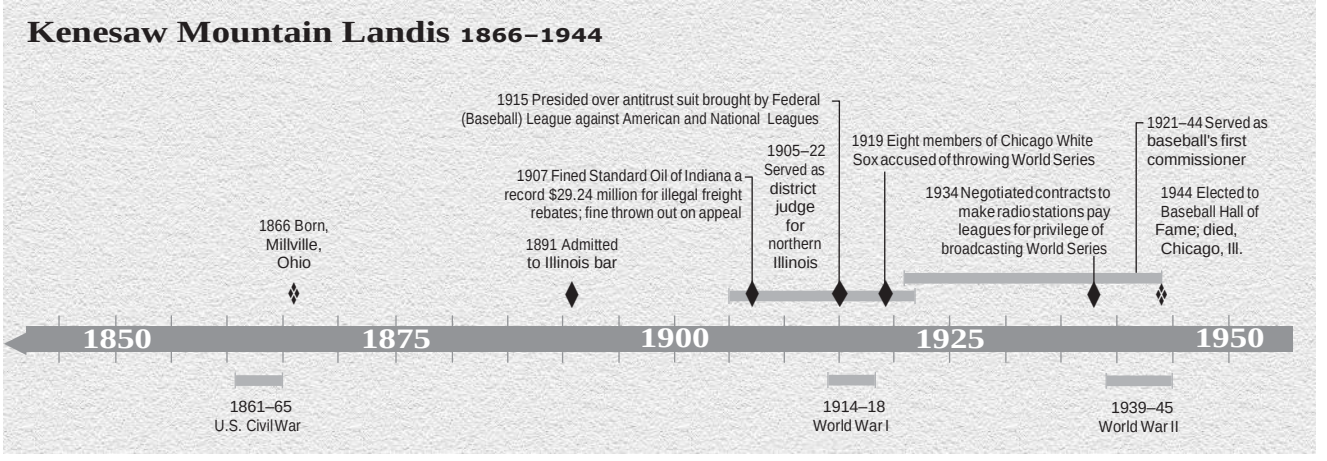
Adjoining Landowners; Endangered Species Act; Environmental Protection Agency; Fish and Fishing; Hunting; Pollution; Solid Wastes, Hazardous Substances, and Toxic Pollutants; Water Rights.

v LANDIS, KENESAW MOUNTAIN

Kenesaw Mountain Landis is remembered by some as the trust-busting federal judge who in 1907 imposed a whopping fine against millionaire John D. Rockefeller's Standard Oil. More often, sports fans remember Landis as the first and, arguably, most powerful commissioner of U.S. baseball.

Landis earned a reputation as a stern, highly principled baseball commissioner who ran a tight ship and disapproved of gambling. He antagonized many team owners with his



dictatorial style, yet was reelected several times during his 24-year reign.

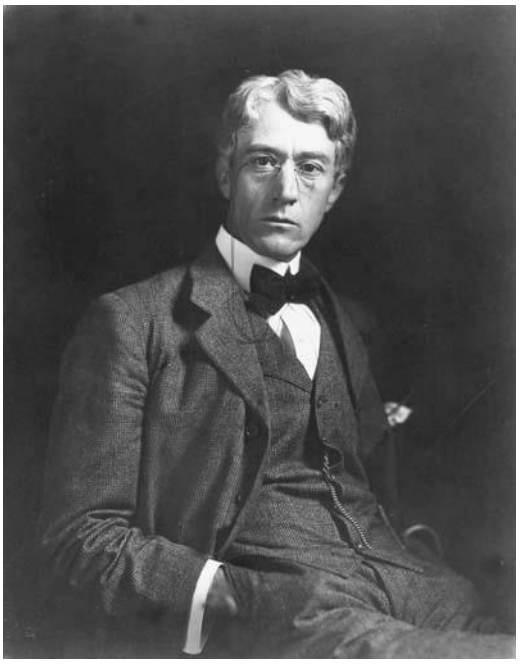
Although Landis is criticized for maintaining racially segregated major league teams, he is credited with restoring the integrity of the sport after the Black Sox cheating scandal—in which eight members of the Chicago White Sox were accused of throwing the 1919 World Series—nearly ruined baseball. Surprisingly popular with the public, the former judge was elected to the Baseball Hall of Fame in 1944.

Landis was born November 20, 1866, in the small Ohio town of Millville. He was named after the mountaintop near Atlanta where his father, a Union Army surgeon, was wounded in battle during the U.S. CIVIL WAR. Although Landis did not finish high school, he attended the University of Cincinnati and the Union College of Law in Chicago. He practiced law in Chicago until 1905 when he was appointed by President THEODORE ROOSEVELT to serve as U.S. district judge for northern Illinois.

Landis made headlines in 1907 when he fined Standard Oil of Indiana a record $29.24 million for illegal freight rebates. The decision was applauded by the public but thrown out on appeal. Landis remained on the federal bench from 1905 to 1922, also gaining national attention for his sedition trials of labor leaders and socialists during WORLD WAR I. After becoming the first baseball commissioner in 1921, Landis retained his judgeship for one year, until members of Congress complained about CONFLICT OF INTEREST in matters pertaining to the sport.

In 1921 Landis replaced the three-person national commission set up in 1903 to oversee the sport of baseball. Although his official title was commissioner for the American and National Leagues of Professional Baseball Clubs and for the National Association of Professional Baseball, Landis was often called simply the czar of baseball.

Landis was asked to do nothing less than save professional baseball. The game suffered a public relations disaster after the White Sox conspiracy and bribery scandal. To cleanse the sport of corruption or the mere appearance of cheating, Landis imposed lifetime bans on the eight White Sox players who had collaborated with gamblers during the 1919 World Series. He also did not hesitate to ban other ballplayers for gambling offenses.



Kenesaw Mountain Landis.
LIBRARY OF CONGRESS.

REGARDLESS OF THE VERDICT OF JURIES, NO PLAYER THAT THROWS A BALL GAME, ... SITS IN CONFERENCE WITH A BUNCH OF CROOKED PLAYERS AND GAMBLERS WHERE THE WAYS AND MEANS OF THROWING A GAME ARE DISCUSSED, AND DOES NOT PROMPTLY TELL HIS CLUB ... WILL EVER AGAIN PLAY PROFESSIONAL BASEBALL.
—KENESAW MOUNTAIN LANDIS

Landis died in Chicago, at age 78, on November 25, 1944.

LANDLORD

A lessor of real property; the owner or possessor of an estate in land or a rental property, who, in an exchange for rent, leases it to another individual known as the tenant.

CROSS REFERENCE

Landlord and Tenant.

LANDLORD AND TENANT

Landlord and tenant have an association arising from an agreement by which one individual occupies the other's real property with permission, subject to a rental fee.

The term *LANDLORD* refers to a person who owns property and allows another person to use it for a fee. The person using the property is called a tenant. The agreement between a landlord and a tenant is called a lease or rental agreement.

The landlord and tenant relationship has its roots in FEUDALISM, a system of land use and ownership that flourished in Europe between the tenth and thirteenth centuries. Under feudalism land was owned and controlled by a military or political sovereign ruler. This ruler gave portions of land he owned to another person, called a lord. The lord, in turn, could

allow another person, called a vassal, to use smaller portions of the lord's land. The vassal pledged allegiance and military or other service to the lord in exchange for the right to live and work on the land.

In 1066 the Normans of France conquered England, and William the Conqueror installed himself as king, becoming William III of England. He used the feudal framework of land control to retain political power in faraway lands. Feudalism as a means of political control became obsolete by the fourteenth century, but the hierarchical system of land use and ownership remained.

Legal Relationship

The contemporary landlord and tenant relationship derives from the relationship between the lord and the vassal. However, in the early 2000s the landlord is the owner of the property—not, like the feudal lord, merely the manager. The tenant is similar to the vassal because the tenant does not own the property but is allowed to use it for a fee.

The landlord and tenant relationship usually refers to a living arrangement. In this respect landlord and tenant law differs from the law regarding leases. In a landlord and tenant relationship, the parties are often referred to as lessor (landlord) and lessee (tenant). Indeed, a lease is a contract that creates the same relationship as exists between a landlord and tenant: The lessor owns property and allows the lessee to use it for a fee. However, the law of leases does not necessarily concern itself with living arrangements. A lease agreement may, for example, relate to the use of a good or service. Because living arrangements are vital to human existence, landlord and tenant relationships are treated differently from lease contracts.

Generally, a landlord and tenant relationship exists if (1) the property owner consents to occupancy of the premises; (2) the tenant acknowledges that the owner has title to the property and a FUTURE INTEREST in the property; (3) the owner actually has title to the property; (4) the tenant receives a limited right to use the premises; (5) the owner transfers possession and control of the premises to the tenant; and (6) a contract to rent exists between the parties.

A rental contract may be implied under the law. That is, landlord and tenant law may apply even in the absence of a written and signed rental agreement between the owner of the property and the person living on the property. Whether a court will imply a relationship depends on the facts of the case. The court will look at a number of factors, including the owner's consent to occupancy of the property, the length of the occupancy, and the exchange of monies, goods, or services. A court's finding that a landlord and tenant relationship exists between two or more persons is significant because the law places duties on both parties in such a relationship.

Landlord and Tenant Reforms

Traditionally, landlord and tenant law was favorable to landlords. Courts resolved disputes between landlords and tenants according to strict contract and property principles, and tenants often were forced to pick up and move without notice or an opportunity to present an argument to a court. Also, landlords had no obligation to maintain the premises, and many tenants were forced to live in uninhabitable conditions.

In the twentieth century, as urban populations increased and workers became more specialized, landlord and tenant law was forced to change. Typical tenants were no longer as handy at making repairs as were tenants in previous years. They worked long hours, they did not have the time to maintain premises, and building designs and utilities were more complex than before. These developments made maintenance a specialized task that could be carried out only by the landlord.

Before the 1960s, landlords were not required to rent out properties that were fit for habitation. Landlords could rent filthy, rat-infested apartments lacking hot water and heat. Although no one was physically forced to live in such an apartment, for many persons it was the only kind they could afford.

In the 1960s and 1970s states began to enact landlord and tenant laws requiring that domestic rental properties be made fit for their particular purpose. The IMPLIED WARRANTY of HABITABILITY established by statute meant that rental property must have proper plumbing, water, heat, structural integrity, and other basic features necessary for human habitability. These laws required landlords to make domestic rental property habitable even if they did not promise tenants habitable conditions in the rental agreement.

Subsequent landlord and tenant statutes further required cities to create housing agencies

to enforce the laws governing habitability. These agencies are charged with inspecting domestic rental properties to make sure they meet maintenance standards set forth in statutes and agency regulations. The agencies report to a state agency such as the department of health.

State legislation also governs the financial aspects of the landlord-tenant relationship. Such statutes regulate security deposits, require plain language in rental contracts, require inventory checklists, set rules on damage to rental units, and establish rights and duties upon termination of the rental agreement. In some states some of these laws are set out in court opinions or CASE LAW. However, most landlord and tenant laws are set out in statutes in an attempt to make information about rights and duties accessible and understandable to both parties.

Contemporary landlord and tenant laws vary from state to state. Local lawmaking bodies may enact additional landlord and tenant laws, provided they do not conflict with state laws.

Generally, landlords must deliver the rented premises to the tenant at the beginning of the tenancy and must disclose to the tenant any potential dangers and defects in the premises. The length of the tenancy should be set out in the rental agreement. If no term is written into the agreement, courts will usually deem the tenancy to be month to month. This means that either party must give the other one month's written notice before terminating the tenancy.

The cost of rent is usually governed by market forces, which means that it is usually dictated by what landlords in a similar area charge. Local laws in some urban areas, such as New York City, provide for rent control. Rent control laws limit the amount of rent that a landlord may charge a tenant. Most rent control laws, however, put limits on the amount that a landlord may increase the rent. A landlord may raise rent during a rental period only with sufficient notice to a tenant. The terms of this notice are usually set forth in statutes or ordinances.

Implied Warranty of Habitability

One important issue in landlord and tenant law is the implied warranty of habitability. If a landlord breaches the warranty of habitability, the landlord may lose the right to collect rent from the tenant, and the tenant may lose a place to live. *Mannie Joseph, Inc. v. Stewart* (71 Misc. 2d 160, 335 N.Y.S. 2d 709 [1972]) illustrates this process. In *Mannie Joseph,* a landlord brought suit against a tenant, seeking back rent. The tenant testified in court that the apartment had no heat, no gas for the stove, no hot water, no running water in the kitchen, low water pressure in the bathroom, "ever-present rats and cockroaches," soggy ceilings and walls, broken windowpanes, no superintendent, and a toilet that did not flush. This testimony was supported in court by the housing director of the West Harlem Community Organization and verified in a personal visit by Judge Richard S. Lane, who noted that the oral testimony had not been sufficient to prepare him for what he saw.

Judge Lane found that the landlord had breached the implied warranty of habitability and refused to order the tenant to make back rent payments. In his opinion, Lane wondered why the tenant should have to pay for what she was receiving. He abated, or forgave, the rent and ordered the landlord to pay the tenant's court costs.

Lane could have ordered the landlord to make repairs, but there were not enough people still living in the building to warrant such an order. In fact, the department of health had recently ordered the building vacated, and Lane lamented that the tenant would "soon follow her many former co-tenants out into the streets."

Implied Warranty of Quiet Enjoyment

Landlords have additional duties and restrictions under landlord and tenant statutes. Under the implied warranty of quiet enjoyment, a landlord must give notice to the tenant and receive permission from the tenant before entering rented premises. This rule does not apply if there is a BONA FIDE emergency, such as a fire or some other danger to the premises.

A concept related to quiet enjoyment is the tenant's right to reasonable use of the premises. Landlords may not substantially interfere with this right. Whether actions by the landlord substantially interfere with a tenant's reasonable use of the premises is determined by the facts of the case. To illustrate, assume that a tenant rents an apartment and works there repairing electronic equipment. The landlord's refusal to allow the tenant to conduct such activity may constitute substantial interference of a reasonable use. If, however, the tenant uses the premises to mix explosive materials, the landlord may have the right to interfere because such a use is unreasonable.

If a landlord is found to have interfered with a tenant's quiet enjoyment or reasonable use of the premises, the tenant may recover damages. The measure of damages varies by jurisdiction. Usually, the tenant will not have to pay rent for the period of interference, and the tenant may seek damages for any losses caused by the interference.

Reciprocal Duties

There are several reciprocal duties between landlords and tenants. A landlord must keep the premises in good repair, but the tenant must not damage the premises. The tenant must leave the premises in their original condition, accounting for reasonable wear and tear, or risk losing the security deposit. A security deposit is money deposited by the tenant with the landlord to guarantee the tenant's performance under the lease. If the tenant damages the premises, the landlord may keep the security deposit and sue the tenant for damages not covered by the deposit.

A landlord must give a tenant notice to vacate the premises if the landlord wishes to rent the premises to another tenant. The landlord may not do this during a rental period. For example, if a tenant has signed a lease for one year, the landlord may not force the tenant to move until the end of the year. If the lease period expires and the landlord has not found a new tenant and has not issued a new lease to the present tenant, the present tenant may be allowed to stay on the premises on a month-to-month basis.

If the tenant plans to move during a rental period, the tenant must give at least a one-month written notice to the landlord. If the tenant fails to give notice to the landlord and leaves the premises, the tenant may be responsible for future rental payments. However, in this situation, the landlord is under a duty to take reasonable steps to find another tenant. This is called the duty to mitigate damages. Once the landlord finds another tenant, or the original lease expires, the tenant's duty to pay expires.

Eviction

If the lease period expires and the landlord has found a new tenant, but the present tenant refuses to leave the premises, the landlord may sue the present tenant for damages if the landlord could be charging the new tenant more rent. The landlord may also have the tenant evicted by filing suit in court. Such a suit is called a wrongful or unlawful detainer. Unlawful detainers are governed by statute and may be based on damage to the property, nonpayment of rent, or unforeseen changes in the economic conditions of the landlord.

All states provide for unlawful detainer hearings. These proceedings help landlords avoid financial loss. Depending on the statute, a court will schedule an unlawful detainer hearing from one to three weeks after the landlord files suit. In most states the hearing is limited to issues concerning the tenant's and landlord's rights and duties. The majority of states prohibit landlords from removing a tenant's personal property from the premises until after the court orders an eviction.

A tenant may avoid eviction for nonpayment of rent by paying the past due rent along with any filing costs incurred by the landlord. If the tenant is unable to pay rent before the court date, the tenant can still present defenses to the eviction in court. For example, the tenant may argue that the rent is not due because the landlord failed to make necessary repairs. If the tenant is unable to defend successfully the failure to pay rent, the court will order the tenant to vacate the premises by a certain date in the near future. In order to collect the unpaid rent, the landlord usually must file a separate action against the tenant.

Sometimes the action or inaction of a landlord may constitute a CONSTRUCTIVE EVICTION. A constructive eviction occurs when the landlord has made living on the premises unbearable or impossible. For example, assume that a landlord has refused to provide heat to rented premises. This constitutes a constructive eviction, and the tenant is not liable for rent.

Eviction from Public Housing

The law of eviction differs for tenants in public housing. Public housing is low-cost housing provided by the federal government to impoverished persons. Under the National Public Housing Asset Forfeiture Project (28 U.S.C.A. § 881[a][7]), the HOUSING AND URBAN DEVELOPMENT DEPARTMENT and the JUSTICE DEPARTMENT may evict persons from public housing without notice and without a hearing, under exigent circumstances—that is, when the eviction is directly necessary to secure an important

government or public interest, and there is a special need for prompt action. An eviction from public housing can be initiated only by the proper government authorities.

Whether exigent circumstances exist to justify eviction without notice and a hearing depends on the facts of the case. The mere use or possession of illegal narcotics, for example, does not warrant summary eviction. However, if an apartment in a public housing project is being used for constant, high-level drug dealing, such activity may constitute exigent circumstances (*Richmond Tenants Organization v. Kemp,* 956 F.2d 1300 (4th Cir. 1992)). Although public housing tenants have increased eviction risks, the additional eviction procedures that must be followed by governments make eviction of public housing tenants a longer, more complicated process than eviction of private tenants.

The Supreme Court in *Department of Housing and Urban Development (HUD) v. Rucker* (535 U. S. 125, 122 S. Ct. 1230, 152 L. Ed. 2d 258 (2002)), upheld the Anti-Drug Abuse Act of 1988 to address the problem of drug-related criminal activity in federally subsidized public housing. The act mandated that every local public housing agency insert a clause in its standard lease document that gives the agency the right to evict tenants if they use or tolerate the use of illegal drugs on or near their premises.

Assignment of a Lease

A tenant may give his or her rights as a tenant to another person. This is called an assignment, and it is permissible unless the landlord objects or unless it is prohibited in the rental agreement. If a tenant assigns his or her rights, the tenant is still responsible for the payment of rent. In essence the recipient of the rental rights, or assignee, is a tenant of the original tenant, and there is no legal relationship between the assignee and the landlord.

Courts often examine lease agreements for *unconscionability*. Unconscionable agreements are ones that unduly favor one party over the other. For example, assume that a rental agreement calls for the payment of damages to the landlord if the tenant leaves the apartment without sufficient notice. If the court considers the amount of damages to be too high, it may reduce the damages owed to the landlord.

Some lease agreements allow either party to break the agreement, and specify an amount of damages that the breaching party must pay to the other in the event of breach. Landlord-tenant relationships governed by such agreements are called *tenancies at sufferance*. Courts usually examine these agreements to ensure that they are not unconscionable.

Tenant-Rights Organizations

In many cities tenant organizations operate to protect the interests of tenants. These organizations offer information and services to tenants. Most tenant groups offer information and services to nonmembers for a fee based on the tenant's ability to pay and the amount of work necessary to resolve the tenant's rental issues. Most states have statutes that prohibit landlords from evicting a tenant based on the tenant's membership or participation in a tenant organization.

Landlords are under no obligation to rent to tenants. However, under the FAIR HOUSING ACT OF 1968 (42 U.S.C.A. §§ 3601–3619 (1988 & Supp. III 1991)), they may not refuse to rent based on race, color, RELIGION, sex, handicap, familial status, or national origin.

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Mitigation of Damages; Rent Strike; Subletting

LANDMARK

A structure that has significant historical, architectural, or cultural meaning and that has been given legal protection from alteration and destruction.

New York City's Chrysler Building (foreground) and Empire State Building (left) are examples of individual landmarks.

AP IMAGES

Although landmark preservation laws vary by city and state, they have the same basic purpose: to keep landmarks as close to their original condition as possible. As a legal specialty, landmark and preservation law has developed as the number of designated landmarks has grown in the United States.

Landmarks are often buildings such as hotels, homes, skyscrapers, theaters, museums, stores, libraries, churches, and synagogues. Other structures, such as bridges, and even natural points of interest, such as trees, can also be designated as landmarks if they have special historical, architectural, or cultural significance.

New York City divides its landmarks into four categories: individual, interior, scenic, and historic district. Individual landmarks are designated for their exterior. Interior landmarks are noted for the portions of their interior that are open to the public. Scenic landmarks encompass structures that are not buildings, such as bridges, piers, parks, cemeteries, sidewalks, clocks, and trees. Historic district landmarks include entire areas that have architectural unity and quality or that represent a specific architectural period or style. All buildings within a designated historical district are protected from alteration or destruction.

The Chrysler Building in New York City is an example of an individual landmark. At the time of its completion, in 1930, it was the tallest building in New York City, at 77 stories and 1,046 feet. Built by Walter P. Chrysler, the founder of the Chrysler Corporation, the building remains a part of the New York City skyline. The building's art deco style is unique. Outside the 31st floor, a line of cars made of gray and white bricks encircles the building. The cars have chrome hubcaps, which are embedded in the wall. On each of the FOUR CORNERS of this floor is a buttress, and atop each buttress is a giant steel eagle similar in style to the ornament that used to adorn the Chrysler radiator cap. The floors from the 31st to the 59th make up a tower, and the 59th floor is marked with eight gargoyles. A spire begins on the 59th floor, constructed of arches with triangular windows. At night the spire is lit from the inside, highlighting its place in the Manhattan skyline.

Once a landmark has been designated, it is legally protected from alteration or destruction. If the owner of a landmark wishes to change it, the alterations must be approved by the commission or council that governs the landmarks in the city or state in which the landmark is located.

The Landmarks Preservation Commission of New York City is one such body. Since its creation in 1965, the commission has designated more than a thousand landmarks in New York City. The commission creates guidelines for landmark designation, designates landmarks, and reviews applications for the alteration of previously designated landmarks. The group is made up of 11 commissioners, including at least one from each of the five boroughs of New York City.

Many U.S. cities have ordinances regulating historical preservation of landmarks. Under these ordinances a landmark owner basically has two obligations: First, the owner is responsible for the upkeep of the building or structure, which is a basic requirement for any property owner; and second, the owner is required to get advance approval for any exterior improvements or alterations to the landmark. Requests for alterations are made to the appropriate city or state preservation commission.

New York City's Landmarks Preservation Law was passed in 1965, two years after the

historic Pennsylvania Station in New York City was demolished to make way for Madison Square Garden. The demise of this historical structure was one among many that sparked the movement to enact preservation laws to protect landmarks.

Despite their prevalence landmark laws are often challenged by property owners who feel that the laws create undue interference with their use of their property. Typically, a landmark owner argues that a taking has occurred because a city or state preservation council has rejected the owner's application to alter the landmark. A taking is defined as interference with or damage to a private property owner's land-use rights. In zoning law cases, a taking can occur if a property owner is denied economically viable use of the land or the buildings on the land. In landmark cases the line between taking and a legitimate government-imposed limitation is often blurred.

The 1978 case of *Penn Central Transportation Co. v. New York City,* 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631, illustrates the strength of New York City's landmark preservation laws over the desires of a landmark owner. Penn Central, the owner of the Grand Central Terminal, leased the building to a company that planned to construct a 50-story office tower on top of it. However, the New York City Landmarks Preservation Commission had designated the terminal as a historic landmark, and the commission refused to allow the building's exterior to be altered by the planned tower. Penn Central sued the city, and the case went to the U.S. Supreme Court.

Penn Central argued that the construction denial was a taking. New York City argued that "regulating private property for historical, cultural or aesthetic values, if it is done in accord with a comprehensive plan that provides benefit to all, is in the public interest." The city also argued that the meaningful preservation of landmarks meant that any additions should "protect, enhance and perpetuate the original design, rather than overwhelm it."

The Supreme Court ruled that it was constitutional, "as part of a comprehensive program to preserve historic landmarks and historic districts, [to] place restrictions on the development of individual historic landmarks … without effecting a 'taking.'"

Penn Central established three factors for determining whether a taking has occurred in landmark land-use cases: the economic effect of the regulation on the claimant; how much the regulation affected investment-backed expectations; and the character of the government action—whether there was a legitimate state interest, such as an interest in preserving existing landmarks. New York City's refusal to permit construction did not reduce Penn Central's income or interfere with its original intent of operating the terminal, and because New York City had a legitimate state interest (preserving the landmark in its original state), the Supreme Court ruled that a taking had not occurred and that the landmark law was constitutional.

In the 1980 case of *Agins v. City of Tiburon,* 447 U.S. 255, 100 S. Ct. 2138, 65 L. Ed. 2d 106, the Supreme Court ruled that "regulation is a taking if it doesn't substantially advance legitimate state interests or denies an owner economically viable use of his land." *Agins* established a two-part test to determine whether a taking has occurred. Under *Agins* a regulation is a taking if it does not substantially advance a legitimate state interest and if it denies the landmark owner all economically viable use of the land. The *Agins* RULING clarified the amount of economic effect necessary for a regulation to be considered a taking. If a regulation prevented all economically viable use of the land, it was a taking. However, if a regulation left some economically viable use, it was not considered a taking.

Twelve years later, in *Lucas v. South Carolina Coastal Council,* 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed. 2d 798 (1992), the Court clarified its definition of economically viable use, stating that it was any use that was greater than zero.

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CROSS REFERENCES

Eminent Domain; Land-Use Control.

LANDRUM-GRIFFIN ACT

The Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C.A. § 401 et seq.), commonly known as the Landrum-Griffin Act, is an important component of federal LABOR LAW. The act was named after its sponsors, Representative Phillip M. Landrum of Georgia and Senator Robert P. Griffin of Michigan. The provisions of Landrum-Griffin seek to prevent union corruption and to guarantee union members that unions will be run democratically.

The act resulted from a highly publicized investigation of union corruption and RACKETEERING chaired by Senator JOHN L. MCCLELLAN of Arkansas. The Senate Select Committee on Labor and Management Practices, popularly known as the McClellan Committee, was created in 1957 in large part because of the perception that the Teamsters Union was corrupt and under the influence of organized crime. The McClellan Committee's investigation revealed that officials of the Teamsters Union and other groups had taken union funds for private use and that the union was clearly linked to organized crime. One result of the probe was the expulsion of the Teamsters and two other unions from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). The AFL-CIO is the largest U.S. labor organization, a federation of autonomous labor unions that is dedicated to enhancing and promoting unionism.

The other result was the passage of the Landrum-Griffin Act. To prevent abuses and acts of oppression, the act attempts to regulate some internal union affairs and provides for reporting to the government on various union transactions and affairs. Senator JOHN F. KENNEDY of Massachusetts was instrumental in inserting title I of the act (29 U.S.C.A. § 411 et seq.), which has been dubbed the union BILL OF RIGHTS. Title I mandates FREEDOM OF SPEECH and assembly in the conduct of union meetings, equality of rights regarding voting in elections, the nomination of candidates, and attendance at meetings. A secret ballot is required for voting on increases in dues or assessments. In regard to disciplinary actions, a member must be given written charges, time to prepare a defense, and a FAIR HEARING. The act also guarantees that a member will not be subject to union discipline for attempting to exercise statutory rights. A member must have access to union financial records and has the right to recover misappropriated union assets on behalf of the union when the union fails to do so.

Title II (29 U.S.C.A. § 431 et seq.) deals with the management and reporting of union finances, a particular area of concern for Congress in the wake of the Teamsters Union's misappropriation of funds. The act requires unions to have constitutions and bylaws and to file copies of both with the U.S. secretary of labor. They must file reports that show dues, fees, and assessments; qualifications for membership; financial auditing; and authorization for the disbursement of funds and other types of spending. Unions must also file financial reports that show assets and liabilities at the beginning and end of the fiscal year, receipts, salaries, expense reimbursements, and loans to any officer, employee, member, or business enterprise. Officers and employees of unions may be required to disclose in written reports any personal financial interests that may conflict with duties owed to union members and any transactions or business interests that would present a CONFLICT OF INTEREST with union duties.

The act also has provisions that apply when a labor organization suspends the autonomy of a union local and places the local or another unit under a trusteeship. This provision addresses a concern that corrupt national union leaders may take over control of union locals to maintain power. The law provides the conditions under which a trusteeship may be imposed and certain restrictions under which it may operate.

Landrum-Griffin also addresses the personal responsibility and integrity of union officers and representatives. Under the act, officers and representatives are held to common-law principles of trust relationships through express provisions that they occupy positions of trust in relation to the organization and its members as a group. This means that persons in union leadership positions must act in the best

interests of the union. If a union official acts for personal gain, the official can be held accountable for breach of duty. Embezzlement of union funds is a federal offense under the act. And persons who have been convicted of certain specified crimes are barred from serving as union officers, agents, or employees for five years after being released from prison.

The Landrum-Griffin Act provides the tools for union democracy, but it also provides greater government control over union affairs previously believed to be the province of the unions themselves.

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v LANFRANC

Lanfranc served as archbishop of Canterbury under William the Conquerer. He reformed the English church, established strong church-state relations, and introduced components of Roman and CANON LAW to England. Under William's reign, he laid the foundation for what succeeding theorists would build into England's secular common-law court system. Early U.S. law derived some elements from this system.

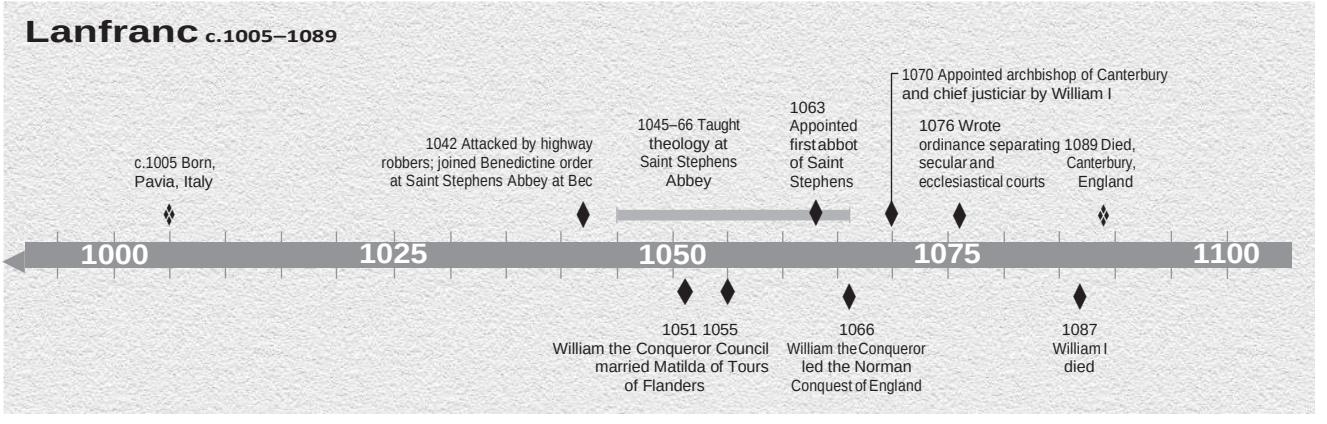
Lanfranc was born in about 1005 in Pavia, Italy. He studied law in Pavia and became a respected scholar, principally because of his studies in Roman law, which was a subject of growing interest in Italy at the time.

Lanfranc established a school at Avranches, Normandy, and taught for three years, until about 1042. After being attacked and almost killed by a highway robber, he went into seclusion at Saint Stephens Abbey at Bec, a newly established monastery. After three years of total seclusion, he returned to teaching, this time at the monastery. He taught there for 18 years, earning high respect throughout Europe as an instructor of theology. The school became one of the most famous in Europe under his leadership. The future pope Alexander II was among his students.

When William the Conquerer decided to marry Matilda of Flanders, Lanfranc declared that the union would be a violation of canon law. Because of Lanfranc's strong opposition, William threatened to exile him. Lanfranc eventually gave up his stand against the MARRIAGE. In about 1051 William married Matilda, despite a papal ban on the union. Lanfranc sought support from the pope and engineered an eventual reconciliation of the papacy with the king. Six years after the wedding, William received the pope's approval to marry Matilda. In 1063 the grateful king appointed Lanfranc the first abbot of Saint Stephens.

Lanfranc also successfully lobbied for papal support for William's subsequent invasion of England. Because of these efforts, Lanfranc became William's closest and most trusted adviser by the time of the invasion in 1066, which resulted in the Norman Conquest.

YOU CAN OFFER GOD NO GREATER OR MORE PLEASING GIFT THAN YOUR DESIRE TO GOVERN DIVINE AND HUMAN AFFAIRS BY THE APPROPRIATE LAWS.
—LANFRANC



In 1070 William appointed Lanfranc archbishop of Canterbury and chief justiciar. In the latter capacity, Lanfranc worked as a viceroy, or representative of the king, alongside William and when William was away from court. To reinforce William's dominance as ruler of England, Lanfranc replaced many English bishops with Normans. He also defeated an effort by the archbishop-elect of York to declare independence from Canterbury. He supported absolute veto power for the king and helped lay the precedent for trying bishops before secular courts.

Lanfranc supported papal sovereignty and protected the church from secular influences. He also helped William establish independence for the English church. In 1076 he wrote an important ordinance that separated secular courts from ECCLESIASTICAL COURTS. In addition, he reformed guidelines for the marriage of priests, established ecclesiastical courts, and strengthened monasteries. He died May 24, 1089.

Lanfranc brought to England an understanding of canon and Roman law, which had been more widely embraced in continental Europe. Although he did not replace England's court system with Roman law, he introduced components of that system to England's court system.

Lanfranc's efforts laid the foundation for important writings on ENGLISH LAW in the twelfth and thirteenth centuries. In the twelfth century, the first major text on the COMMON LAW was written, reputedly by RANULF GLANVILL (his authorship is now disputed). In the thirteenth century, writings by HENRY DE BRACTON built further on the common law with principles from both Roman (or civil) law and canon law. These works were important elements in the establishment of England's eventual common-law system. The scholar FREDERIC W. MAITLAND said that Lanfranc's influence was responsible for "the early precipitation of English law in so coherent a form." The United States borrowed concepts from the English court system that began to develop during the years following the Norman Conquest.

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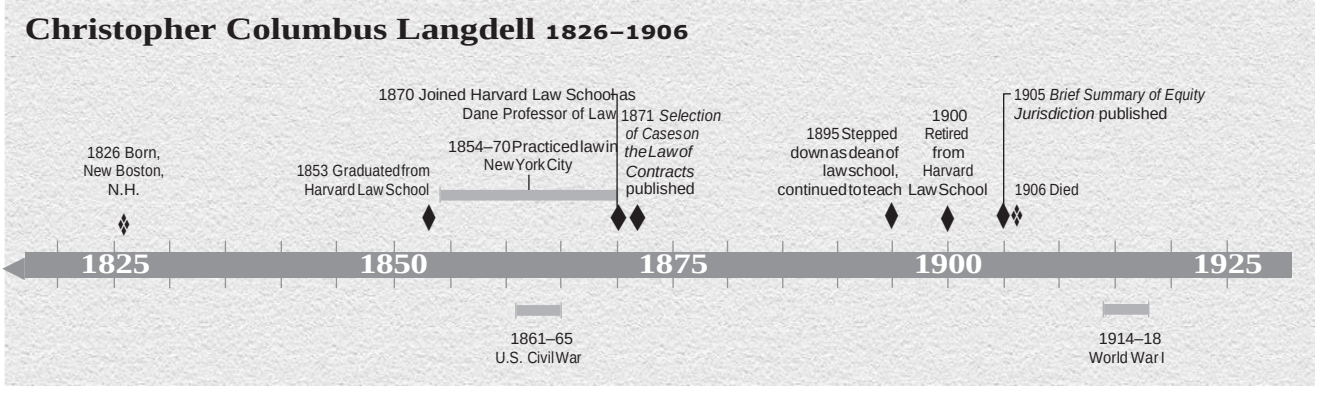
v LANGDELL, CHRISTOPHER COLUMBUS

"Mr. Fox, will you state the facts in the case of *Payne v. Cave?*" That simple question marked the beginning of a revolution in legal education. In 1870 Professor Christopher Columbus Langdell, in the first contracts class he taught at Harvard Law School, put the question to a student and forever changed the way lawyers learned their craft. No longer would law students sit passively and take notes while their professor lectured or read out of a legal treatise. Langdell's students read the reports of actual court cases and were required to discuss them in class. Langdell is credited with introducing the case-study method of instruction into U.S. law schools. Although there is evidence that Langdell was not the first to use the CASE METHOD, as dean, he had the opportunity to shape the program of the influential Harvard Law School and in turn the law training programs of schools throughout the United States.



Langdell was born in the small farming town of New Boston, New Hampshire, on May 22, 1826. With the financial assistance of his two sisters, and a later scholarship, Langdell was educated at Exeter Academy. He entered Harvard College in 1848 but left after only one year to begin his legal education by clerking in a law office, a common method of training for lawyers in those days. Within 18 months, Langdell was back at Harvard, this time in the college's law school, where he remained for three years. Langdell was admitted to the bar in 1854 and practiced law in New York City for 16 years.

In 1869 Harvard's new president, Charles W. Eliot, an accomplished chemist committed to educational reform, recruited Langdell to be Dane Professor of Law at the law school. It was hoped that Langdell could help revitalize the school, which had been criticized by the legal community as stagnant. In September 1870 Langdell was voted dean of the three-member faculty, a position that allowed him to change the method of legal instruction at Harvard.

Prior to Langdell, the primary teaching method in the nation's law schools was the lecture. Many professors published textbooks that were really expanded versions of their lectures. In class, students took notes while professors read lectures, or they were quizzed on specific portions of an assigned textbook reading. Discussion was rare, as it was assumed that the author of the textbook had found and set forth the true rules of law.

Langdell proposed that law students must be given some means of experimentation and research by which they might cut through the excessive verbiage of black-letter rules and discover the fundamental scientific axioms that ought to be used in studying, teaching, and judging the law. Casebooks were to be the students' laboratories. Langdell's case-study method was almost impossible to teach when he first introduced it in 1870 because of a lack of printed case reports. When Langdell introduced the case method at Harvard Law School, he had to write the books he used in his classes. His *Selection of Cases on the Law of Contracts* (1871) was the first modern CASEBOOK and became the model for many later such books.

Langdell's new method combined the careful study of the decisions in previous cases, with the Socratic method of teaching. The Socratic method was modeled after that used by the Greek philosopher Socrates. Using this method, Langdell would ask his students a series of questions whose answers were designed to lead to a logical conclusion foreseen by Langdell.

When Langdell first used this method, many of his students were not pleased. In fact, on that first day, many students were unprepared to answer Langdell's questions about the case of *Payne v. Cave.* The majority of students openly condemned this new method, complaining that there was no instruction or imparting of rules and that really nothing had been learned. The newer students who had not studied law before resisted answering questions because they thought it presumptuous of them to offer an opinion on a matter in which they had no formal training. The older students, upset that Langdell imparted no legal rules, thought the answers of their fellow students nothing more than the idle talk of young boys. Students even expressed concern that they could never learn the law in time to graduate if it continued to be taught by such a method. When asked a question by a student, Langdell usually hesitated and then answered by posing a question to the student. This led some to question whether Langdell even knew the law he professed to teach.

Langdell's new method was controversial and not an immediate success. During the first semester he taught with it, his students missed classes regularly, and total enrollment in the course fell to only seven. Dissatisfaction with this educational experiment apparently spawned a new law school, Boston University Law School, and the effects were felt throughout the Harvard Law School, as enrollment fell from 136 in 1870–71 to 113 in 1872–73.

Despite student criticism, Harvard president Eliot remained committed to Langdell and his controversial method. As students began to understand Langdell's method, and in particular his Socratic process involving dialogue between teachers and students, they grew to prefer their active involvement over the relative passivity of the old lecture methods. By 1873–74 Harvard Law School enrollment began to rise again, and by 1890 Langdell's case-study method was firmly established at the flourishing law school.

Langdell's contributions to legal education go beyond the introduction of the case-study method. As dean of Harvard Law School, he

LAW, CONSIDERED AS A SCIENCE, CONSISTS OF CERTAIN PRINCIPLES OR DOCTRINES. TO HAVE A MASTERY OF THESE AS TO BE ABLE TO APPLY THEM WITH CONSTANT FACILITY AND CERTAINTY TO THE EVER-TANGLED SKEIN OF HUMAN AFFAIRS, IS WHAT CONSTITUTES A TRUE LAWYER.
—CHRISTOPHER LANGDELL

added a third year to what had been a two-year curriculum and required students to pass final exams before they could advance to the next year or graduate. He was also instrumental in hiring professors who were not practicing lawyers or judges, an approach unheard of at the time.

In 1895 Langdell stepped down as dean of Harvard Law School. He continued to teach for five years before retiring in 1900. He died on July 6, 1906, at the age of 80.

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LANHAM ACT

The Lanham Act of 1946, also known as the Trademark Act (15 U.S.C.A. § 1051 et seq., ch. 540, 60 Stat. 427 [1988 & Supp. V 1993]), is a federal statute that regulates the use of trademarks in commercial activity. Trademarks are distinctive pictures, words, and other symbols or devices used by businesses to identify their goods and services. The Lanham Act gives trademark users exclusive rights to their marks, thereby protecting the time and money invested in those marks. The act also serves to reduce consumer confusion in the identification of goods and services. In addition, the Latham Act protects against trademark dilution, providing relief if someone uses someone else's trademark in a way that reduces the quality of the trademark.

The Lanham Act was not the first federal legislation on trademarks, but it was the first comprehensive federal legislation. Before the Lanham Act, most of trademark law was regulated by a variety of state laws.

The first federal trademark legislation was passed by Congress in 1870 and amended in 1876. In 1879 the U.S. Supreme Court found that legislation unconstitutional. Two subsequent attempts at federal trademark legislation provided little protection for the rights of trademark users. The movement for stronger trademark legislation began in the 1920s and was championed in the 1930s by Representative Fritz Lanham of Texas. In 1946 Congress passed the act and named it the Lanham Act after its chief proponent. Lanham stated in 1946 that the act was designed "to protect legitimate business and the consumers of the country."

The Lanham Act protected trademarks used in commerce and registered with the U.S. PATENT AND TRADEMARK OFFICE, outside of Washington, D. C. It expanded the types of trademarks that deserved legal protection, created legal procedures to help trademark holders enforce their rights, and established an assortment of rights that attached to qualified trademarks.

Congress has amended the act several times since 1946. The most sweeping changes came in 1988. Those changes included an amendment that authorized the protection of trademarks that had not been used in commerce but were created with the intent that they be used in commerce. Previously, there was a requirement that the marks actually be used.

Congress enacted the Trademark Dilution Revision Act of 2006, Pub. L. 109-312, to overturn a 2003 Supreme Court RULING that required a trademark holder to show that the defendant's mark would cause actual dilution of the plaintiff's mark. The act now only requires to show that the defendant's mark was likely to cause dilution.

In 2003 the multi-national trademark system known as The Madrid Protocol was added to the Lanham Act. This allows foreign trademark applicants who seek protection of their trademarks under U.S. law to avoid having to prove use of the mark in the United States, as long there is a BONA FIDE intent to use the mark. The foreign trademark must be registered in a country that is part of the protocol.

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LAPSE

The termination or failure of a right or privilege because of a neglect to exercise that right or to perform some duty within a time limit, or because a specified contingency did not occur. The expiration of coverage under an insurance policy because of the insured's failure to pay the premium.

The common-law principle that a gift in a will does not take effect but passes into the estate remaining after the payment of debts and particular gifts, if the beneficiary is alive when the will is executed but subsequently predeceases the testator.

In its broadest sense, the term *lapse* describes the loss of any right or privilege because of the passage of time or the occurrence or nonoccurrence of a certain event. It is often used by legislatures in reference to governmental concerns. Legislatures may include anti-lapse provisions in statutes to ensure that certain spending programs remain funded from year to year. Lapse also has distinct significance in the law of insurance contracts and wills.

An insurance policy can lapse, or become void, if the insured fails to make payments on it. All states give insureds a GRACE PERIOD, which allows extra time to make a payment owed under a policy. The grace period varies from policy to policy. For example, in Maine the grace period is seven days for HEALTH INSURANCE policies with weekly premiums, ten days for such policies with monthly premiums, and 31 days for all other such policies (Me. Rev. Stat. Ann. tit. 24-A, § 2707). The grace period in Maine is 30 days for life insurance policies (§ 2505).

Some statutes on insurance policy lapses provide a small measure of protection against lapse. For example, Maine REVISED STATUTES Annotated, title 24-A, section 2739 (West 1995), states that no insurance company may cancel a health insurance policy within three months of nonpayment unless the insurer provides the insured with a notice of potential lapse within ten to 45 days after the premium was due. Section 4751 provides that in the event of a strike by insurance agents, no life or noncancellable health, hospital expense, or hospital and surgical expense insurance policy may lapse owing to nonpayment within 30 days of the strike's inception. This law applies only if the agent is responsible for the collection of premiums and is represented in COLLECTIVE BARGAINING by a labor organization that has been recognized by the state.

A will is a document left by a deceased person, who is called a testator or devisor. A will allocates the property of a testator to living persons. If the intended recipient of a gift in a will (called a beneficiary or devisee) dies before the testator, the gift may lapse. This means that the gift is void and is placed back into the estate of the testator. The property becomes part of the residuum of the estate and may not be disposed of in the manner sought by the testator.

Almost all states have statutes that provide that in the event of a lapse, the gift should go to the issue, or lineal descendants, of the deceased devisee. If the beneficiary has no issue, then the gift is left in the estate of the testator.

In some states the anti-lapse statute applies only to grandparents of the testator and lineal descendants of the testator's grandparents. For example, under the Maine Revised Statutes Annotated, title 18-A, section 2-605 (West 1995), the issue of the deceased devisee may receive a gift intended for the deceased devisee, but only if they survived the testator by 120 hours.

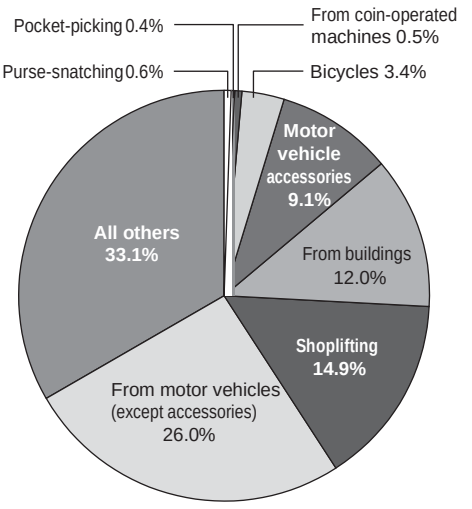
LARCENY

The unauthorized taking and removal of the personal property of another by an individual who intends to permanently deprive the owner of it; a crime against the right of possession.

Larceny generally refers to nonviolent theft. It is a common-law term developed by the royal courts of England in the seventeenth century. In the United States most jurisdictions have eliminated the crime of larceny from statutory codes, in favor of a general theft statute.

The crime of larceny was developed to punish the taking of property in nonviolent face-to-face encounters, and to set it apart from ROBBERY. Robbery involved some measure of

Larceny, by Type, in 2007[a]



[a]Percentages may not add up to 100 due to rounding.

SOURCE: FBI, *Crime in the United States*, 2007.

violence in connection with theft, and the courts did not feel that a nonviolent theft should warrant the same punishment. Larceny was nevertheless punished severely. A person convicted of larceny could receive the death penalty or be sentenced to many years in prison.

The English courts were careful not to encroach on the lawmaking rights of the British Parliament, so they kept the crime of larceny limited and well-defined. A defendant could be convicted of larceny only if he or she had some physical interaction with the victim; the victim relinquished property that was in the victim's possession at the time of the taking; the defendant was not in lawful possession of the stolen goods at the time of the taking; and the defendant actually carried the property away at the time of the interaction.

Over time the English courts recognized the need to expand the concept of larceny. In the absence of legislative action, they created new offenses based on the manner in which the theft was accomplished. Embezzlement was created in the eighteenth century to punish the misappropriation of property after lawful possession. This charge would apply, for example, if a store clerk accepted a customer's money in a legal sale, and then took that money for his or her own use. Embezzlement was punished more severely than larceny because it involved a breach of trust.

Larceny by trick was created to punish the taking of property with the owner's consent when that consent was obtained by fraud or deceit. Before the courts created the offense of larceny by trick, defendants who had swindled their victims were able to argue that they had not committed larceny because the victims had willfully given them property.

Shortly after the courts created larceny by trick, they created the crime of obtaining property by FALSE PRETENSES. Previously, a defendant who induced a person to part with the title to property could escape prosecution because the victim transferred not actual possession of the property but only title to the property. This commercial form of taking was made illegal under the law of false pretenses.

The English courts also began to make distinctions based on the value of the stolen property. GRAND LARCENY was any larceny of property worth more than a certain amount of money. Any larceny of property worth less than that amount was called petit larceny and was punished less severely.

In time the issue of nonviolent theft became too complex for solution through CASE LAW, and the British Parliament began to enact statutes that more clearly defined it.

The law of larceny and related offenses was adopted in the United States and remained in effect throughout the country's early history. Then, in the twentieth century, many legislatures abolished it in favor of a broad theft statute. In North Dakota, for example, the crime of theft now includes "larceny, stealing, purloining, embezzlement, obtaining money or property by false pretenses, extortion, blackmail, fraudulent conversion, receiving stolen property, misappropriation of public funds, swindling, and the like" (N.D. Cent. Code § 12.1-23-01 [1995]).

The sweeping theft statutes are favored by prosecutors because they make it less likely that a defendant can escape punishment by arguing that one of the discrete elements in a larceny, embezzlement, or related theft was not proved. Under larceny statutes persons who commit theft can escape punishment if the prosecutor does not choose the correct charge. Under broad theft statutes, prosecutors need only be concerned with the intent to steal and the value of the property involved.

In states that have incorporated larceny into a broad theft statute, the punishment for a theft is based largely on the value of the stolen property. In Iowa, for example, theft of property exceeding $10,000 in value, theft directly from another's person, and theft of property in and around certain abandoned buildings is theft in the first degree, a class C felony. A class C felony is punishable by a prison term of up to ten years and a fine of at least $500 but no more than $10,000. Theft of property not exceeding $100 in value is theft in the fifth degree, a simple misdemeanor, which may be punished with a fine of up to $100 and an order to perform some COMMUNITY SERVICE specified by the judge (Iowa Code Ann. §§ 714.2, 902.9, 903.1).

The broad theft statutes do not cover all possible theft offenses. States that have a theft statute also maintain statutes prohibiting such acts as the unauthorized use of an automobile, forgery, fraud, deceptive business practices, receiving stolen property, extortion, theft of services, and theft of property that was lost, mislaid, or delivered by mistake.

Massachusetts is one state that has retained its larceny statutes. The general larceny statute in Massachusetts combines the crime of embezzlement with larceny. Under this statute anyone who

> steals, or with intent to defraud obtains by a false pretence, or whoever unlawfully, and with intent to steal or embezzle, converts, or secretes with intent to convert, the property of another ... whether such property is or is not in his possession at the time of such conversion or secreting, shall be guilty of larceny.... (Mass. Gen. Laws Ann. ch. 266, § 30(1)).

Massachusetts also has several other larceny statutes, some of which identify a certain act as larceny. For example, the crime of false pretenses relating to contracts, banking transactions, or credit is specifically defined as larceny (§ 33). This statute is necessary because the general larceny statute does not cover such theft.

Larceny and theft are distinct from burglary, which is committed when a person trespasses into a dwelling or other building with the intent to commit a crime. Burglary does not necessarily consist of the taking of property, although the intent to steal can upgrade a criminal charge from trespassing to burglary.

Larceny is also different from shoplifting, which involves the theft of property from a place of business. Most states have eliminated the crime of shoplifting along with larceny, embezzlement, false pretenses, and similar offenses, in creating one broad theft statute.

In all states larceny and theft are distinct from robbery. Robbery involves the threat of force or the actual use of force in connection with a theft. The line between robbery, and larceny or theft is unsteady. If a perpetrator plies the victim with alcohol or drugs, most courts consider this a form of force that boosts the crime from larceny or theft to robbery. If a perpetrator simply moves a person who is unconscious through no fault of the perpetrator, the movement may not constitute the kind of force that gives rise to robbery. Most courts refuse to convict a defendant of robbery if the victim was unaware of any use of force, but the defendant may be charged with larceny or theft.

Larceny and theft generally are a matter of state law. Congress maintains a few federal laws regarding thefts that have federal implications. These statutes include theft at lending, credit, and insurance institutions; theft of interstate shipments of goods; theft on waterways and oceans; and theft by court officers.

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LASCIVIOUSNESS

Lewdness; indecency; obscenity; behavior that tends to deprave the morals in regard to sexual relations.

The statutory offense of lascivious cohabitation is committed by two individuals who live together as HUSBAND AND WIFE and engage in sexual relations without the sanction of MARRIAGE.

LAST CLEAR CHANCE

In the law of torts, the doctrine that excuses or negates the effect of the plaintiff's contributory

negligence and permits him or her to recover, in particular instances, damages regardless of his or her own lack of ordinary care.

The rule of last clear chance operates when the PLAINTIFF negligently enters into an area of danger from which the person cannot extricate himself or herself. The defendant has the final opportunity to prevent the harm that the plaintiff otherwise will suffer. The doctrine was formulated to relieve the severity of the application of the contributory NEGLIGENCE rule against the plaintiff, which completely bars any recovery if the person was at all negligent.

There are as many variations and adaptations of this doctrine as there are jurisdictions that apply it. Four different categories have emerged, which are classified as *helpless plaintiffs, inattentive plaintiffs, observant defendants,* and *inattentive defendants.*

Helpless Plaintiffs

Where the plaintiff's previous negligence has placed him or her in a position from which the person is powerless to extricate himself or herself by the exercise of any ordinary care, and the defendant detects the danger while time remains to avoid it but fails to act, the courts have held that the plaintiff can recover.

There must be proof that the defendant discovered the situation, had the time to take action that would have saved the plaintiff, but failed to do what a reasonable person would have done. In the absence of any one of these elements, the courts deny recovery.

If the defendant who has a duty to discover the plaintiff's peril does not do so in time to avoid injury to the plaintiff, some courts have permitted recovery under the rationale that the defendant's subsequent negligence is the proximate cause, or direct cause, of the injury, rather than the contributory negligence of the plaintiff. The defendant must have been able to have discovered the peril through appropriate vigilance so as to avoid its harmful consequences to the plaintiff.

Inattentive Plaintiffs

In another group of cases, the plaintiff is not helpless but is in a position to escape injury. The person's negligence consists of failure to pay attention to his or her surroundings and detect his or her own peril. If the defendant discovers the plaintiff's danger and inattentiveness, and is then negligent, a majority of courts allows the plaintiff to recover. Some courts hold that the defendant must actually recognize the plaintiff's danger and inattention. Most courts apply a more objective standard; they require only that the defendant discover the situation and that the plaintiff's peril and inattentiveness be evident to a reasonable person. The discovery can be proved by CIRCUMSTANTIAL EVIDENCE. There is an additional essential qualification that the defendant can frequently, reasonably assume until the last moment that the plaintiff will protect himself or herself, and the defendant has no reason to act until he or she has some notice to the contrary.

If the defendant does not discover the plaintiff's situation—but could do so with appropriate vigilance—neither party can be viewed as possessing the last clear chance. The plaintiff is still in a position to escape, and his or her inattentiveness persists until the juncture of the accident, without the interval of superior opportunity of the defendant. The plaintiff cannot reasonably demand of the defendant greater care for his or her own protection than that which he or she as plaintiff would exercise for himself or herself. Nearly all of the courts have ruled that, in this situation, there can be no recovery.

Observant Defendant

The observant defendant is one who actually sees the plaintiff in time to act so as to avoid the harm and assumes that a duty exists to act under the circumstances. The person perceives the plaintiff's helpless or inattentive condition, but thereafter is negligent in failing to act so as to prevent the plaintiff's harm. In most instances, the defendant's conduct is itself the cause of the plaintiff's danger, but this is not a requirement so long as a duty to act exists.

The plaintiff must prove that the defendant actually saw him or her and that a reasonable person would have known that he or she was inattentive or helpless. This is determined by an objective test entailing circumstantial evidence of the defendant's state of mind. The defendant cannot assert unawareness of the plaintiff's powerlessness or inattentiveness when that fact would have been evident to any observer.

Inattentive Defendant

The inattentive defendant is one who fails to fulfill the duty to maintain a surveillance in

order to see the plaintiff in time to avoid the harm, perceive the person's helpless or inattentive condition, and thereby exercise reasonable care to act in time to avoid the harm. Due to the defendant's negligence, however, he or she fails to see the plaintiff in time, and injury occurs.

Application of Doctrine

There are four possible cases in which the rule of last clear chance can be applied.

The typical last clear chance situation involves the *helpless plaintiff* against the *observant defendant,* and all courts that accept the doctrine will apply it. The few courts that do not recognize the rule attain the same result under the doctrine of willful and wanton misconduct.

In the *helpless plaintiff-inattentive defendant* and the *inattentive plaintiff-observant defendant* cases, most jurisdictions that acknowledge the rule apply it.

Where the case entails the *inattentive plaintiff* against the *inattentive defendant,* the justifications for the rule are eliminated, and nearly all jurisdictions refuse to apply it.

The defendant's negligence must occur subsequent to that point in time when the person discovered or should have discovered the plaintiff's peril.

LAST RESORT

A court, such as the U.S. Supreme Court, from which there is no further appeal of a judgment rendered by it in review of a decision in a civil or criminal action by a lower court.

In most jurisdictions, the state's court of last resort is called the supreme court. This name differs in some jurisdictions, however. For example, the court of last resort in New York is the New York Court of Appeals, while the trial-level court is called the Supreme Court. In Texas, the court of last resort for civil trials is the Texas Supreme Court, but the highest court for criminal appeals is the Texas Court of Criminal Appeals. The state of Texas is rather unusual because it employs two courts of last resort to hear appeals.

LATENT

Hidden; concealed; that which does not appear upon the face of an item.

For example, a latent DEFECT in the title to a parcel of real property is one that is not discoverable by an inspection of the title made with ordinary care. Similarly, a latent defect in an item of merchandise is one that could not have been discovered by any known or customary inspection or test.

LATERAL SUPPORT

The right of a landowner to have his or her property naturally upheld by the adjoining land or the soil beneath.

The adjoining owner has the duty not to alter the land, such as by lowering it, so as to cause the support to be weakened or removed.

CROSS REFERENCE

Adjoining Landowners.

LAW

A body of rules of conduct of binding legal force and effect, prescribed, recognized, and enforced by controlling authority.

In U.S. law, the word *law* refers to any rule that, if broken, subjects a party to criminal punishment or civil liability. Laws in the United States are made by federal, state, and local legislatures, judges, the president, state governors, and administrative agencies.

Law in the United States is a mosaic of statutes, treaties, CASE LAW, ADMINISTRATIVE AGENCY regulations, executive orders, and local laws. U.S. law can be bewildering because the laws of the various jurisdictions—federal, state, and local—are sometimes in conflict. Moreover, U.S. law is not static. New laws are regularly introduced, old laws are repealed, and existing laws are modified, so the precise definition of a particular law may be different in the future from what it is today.

The U.S. Constitution

The highest law in the United States is the U.S. CONSTITUTION. No state or federal law may contradict any provision in the Constitution. In a sense, the U.S. Constitution is a collection of inviolable statutes. It can be altered only by amendment. Amendments pass after they are approved by two-thirds of both houses of Congress or after petition by two-thirds of the state legislatures. Amendments are then ratified by three-fourths of the state legislatures or by conventions in three-fourths of the states. Upon

ratification, the amendment becomes part of the Constitution.

Beneath the federal Constitution lies a vast body of other laws, including federal statutes, treaties, court decisions, agency regulations, and executive orders, and state constitutions, statutes, court decisions, agency regulations, and executive orders.

Statutes and Treaties

After the Constitution, the highest laws are written laws, or statutes, passed by elected federal lawmakers. States have their own constitutions and statutes.

Federal laws generally involve matters that concern the entire country. State laws generally do not reach beyond the borders of the state. Under Article VI, Section 2, of the U.S. Constitution, federal laws have supremacy over state and local laws. This means that when a state or local law conflicts with a federal law, the federal law prevails.

Federal statutes are passed by Congress and signed into law by the president. State statutes are passed by state legislatures and approved by the governor. If a president or governor vetoes, or rejects, a proposed law, the legislature may override the veto if at least two-thirds of the members of each house of the legislature vote for the law.

Statutes are contained in statutory codes at the federal and state levels. These statutory codes are available in many public libraries, in law libraries, and in some government buildings, such as city halls and courthouses. They are also available on the World Wide Web. For example, the statutory codes that are in effect in the state of Michigan can be accessed at http://www.legislature.mi.gov. A researcher may access the United States Code, which is the compilation of all federal laws, at http://uscode.house.gov. The site is maintained by the Office of the Law Revision Counsel of the U.S. House of Representatives.

On the federal level, the president has the power to enter into treaties, with the ADVICE AND CONSENT of Congress. Treaties are agreements with sovereign nations concerning a wide range of topics such as environmental protection and the manufacture of nuclear missiles. A treaty does not become law until it is approved by two-thirds of the U.S. Senate. Most treaties are concerned with the actions of government employees, but they also apply to private citizens.

Case Law

Statutes are the primary source of law, and the power to enact statutes is reserved to elected lawmakers. However, judicial decisions also have the force of law. Statutes do not cover every conceivable case, and even when a statute does control a case, the courts may need to interpret it. Judicial decisions are known collectively as "case law." A judicial decision legally binds the parties in the case and also may serve as a law in the same prospective sense as does a statute. In other words, a judicial decision determines the outcome of the particular case and also may regulate future conduct of all persons within the jurisdiction of the court.

The opinions of courts, taken together, comprise the COMMON LAW. When there is no statute specifically addressing a legal dispute, courts look to prior cases for guidance. The issues, reasoning, and holdings of prior cases guide courts in settling similar disputes. A prior opinion or collection of opinions on a particular legal issue is known as "precedent," and courts generally follow precedent, if any, when deciding cases. BREAKING with precedent may be justified when circumstances or attitudes have changed, but following precedent is the norm. This gives the common law a certain predictability and consistency. The common law often controls civil matters, such as contract disputes and personal injury cases (torts). Almost all criminal laws are statutory, so common law principles are rarely applied in criminal cases.

Sometimes courts hear challenges to statutes or regulations based on constitutional grounds. Courts can make law by striking down part or all of a particular piece of legislation. The Supreme Court has the power to make law binding throughout the country on federal constitutional issues. The highest court in each state has the same power to interpret the state constitution and to issue holdings that have the force of law.

Occasionally, courts create new law by departing from existing precedent or by issuing a decision in a case involving novel issues, called a "case of first impression." If legislators disagree with the decision, they may nullify the holding by passing a new statute. However,

Common-Law Courts

Courts of law are a fundamental part of the U.S. judicial system. The U.S. Constitution and all state constitutions recognize a judicial branch of government that is charged with adjudicating disputes. Beginning in the 1980s, vigilante organizations challenged the judicial system by establishing their own so-called common-law courts. By 1996, these common-law courts existed in more than 30 states. They had no legitimate power, being created without either constitutional or statutory authority, and in fact sometimes contravene established law. As of 2009, the number of such courts had declined, though it was difficult to document the actions of these secretive groups.

Traditionally, common-law courts administered the common law, that is, law based on prior decisions rather than statutes. These new common-law courts, however, are premised on a mixture of U.S. constitutional law, English common law, and the Bible, all filtered through an often racist and anti-Semitic worldview that holds the U.S. legal system to be illegitimate. These common-law courts imitate the formalities of the U.S. justice system, issuing subpoenas, making criminal indictments, and hearing cases. Most of their cases involve divorce decrees and foreclosure actions. Many of the persons on the courts or seeking their assistance are in dire financial circumstances. They wish to prevent the loss of their property by having a common-law court declare them free of the loans they have secured from banks.

Though common-law courts appeared to be merely a symbolic attempt by extremists to assert their political legitimacy, the actions of some of them led to prosecution for criminal conspiracy. Common-law courts have issued arrest warrants for judges and prosecutors in Montana and Idaho and have threatened sheriffs who refused to follow their instructions. In 1994, the Garfield County, Montana, prosecutor charged members of a common-law court with criminal syndicalism, for advocating violence against public officials. One court member was sentenced to ten years in prison, and others received shorter sentences. Other members of vigilante groups have been prosecuted for a variety of fraudulent activities based on the supposed legitimacy of these common-law courts.

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if the court believes that the new statute violates a constitutional provision, it may strike down all or part of the new law. If courts and lawmakers are at odds, the precise law on a certain topic can change over and over.

When researching a legal issue, it is helpful to consult relevant case law. The researcher first finds the relevant annotated statutes and then reads the cases that are listed under the statutes. Reading case law helps the researcher understand how the courts interpret statutes, and also how the courts analyze related issues that are not covered in the statutes. Volumes of case law can be found in some public libraries, in law libraries, in courthouses, and in state government buildings such as statehouses and state libraries. Case law research can also be conducted using the INTERNET. For example, Cornell University's online Legal Information Institute (http://www.law.cornell.edu) offers recent and historic U.S. Supreme Court decisions as well as recent New York appeals decisions.

Agency Regulations and Executive Orders

Administrative agencies may also create laws. The federal and state constitutions implicitly give the legislatures the power to create administrative agencies. Administrative agencies are necessary because lawmakers often lack detailed knowledge about important issues, and they need experts to manage the regulation of complex subjects. On the federal level, for example, the DEPARTMENT OF THE INTERIOR was created by Congress to manage the nation's natural resources. In creating the agency, Congress gave it the power to promulgate regulations concerning the use and protection of natural resources.

Administrative agency regulations have the force of law if they have a binding effect on the rights and duties of persons. For example, the Department of the Interior's regulations that prohibit mining or logging in certain areas

of the country are considered law, even though they are not formulated by an elected official or judge. Federal administrative agency rules are approved by Congress, so ultimately they are a product of the will of elected officials. Similarly, on the state and local levels, an administrative agency may promulgate rules that have the force of law, but only at the pleasure of the elected lawmakers who created the agency. If an agency seeks to change a regulation, it must, in most cases, inform the public of its intentions and provide the public with an opportunity to voice concerns at a public meeting.

Not all agency regulations have the force of law. Agency rules that merely interpret other rules; state policy; or govern organization, procedure, and practice need not be obeyed by parties outside the agency.

Some administrative agencies have quasi-judicial powers. That is, they have limited authority to hear disputes and make binding decisions on matters relevant to the agency. For example, the DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) has a court with authority to hear cases concerning actions by the HHS, such as the denial of SOCIAL SECURITY benefits. An administrative law judge (ALJ) presides over the court, and appeals from ALJ decisions can be taken to an HHS appeals council. If an administrative agency has quasi-judicial powers, decisions made by the ALJ and boards of appeals have the force of law.

The quickest way to uncover information about state agency regulations is to search the World Wide Web. Most state agencies maintain a comprehensive website. Each state's secretary of state can also be accessed on the Web. Most agencies are named according to their area of concern. For example, a department of gaming is concerned with gambling, and a department of fish, game, and wildlife is concerned with issues related to hunting and wildlife conservation.

Executive orders are issued to interpret, implement, or administer laws. On the federal level, executive orders are issued by the president or by another EXECUTIVE BRANCH official under the president's direction. Executive orders range from commands for detailed changes in federal administrative agency procedures to commands for military action. To have the force of law, a federal EXECUTIVE ORDER must be published in the *Federal Register,* the official government publication of executive orders and federal administrative agency regulations. On the state level, governors have similar authority to make laws concerning state administrative agencies and state military personnel.

Local Laws

Counties, cities, and towns also have the authority to make laws. Local laws are issued by elected lawmakers and local administrative agencies. Local laws cannot conflict with state or federal laws. Decisions by local courts generally operate as law insofar as they apply to the participants in the case. To a lesser extent, local court decisions may have a prospective effect. That is, a local court decision can operate as precedent, but only in cases brought within the same jurisdiction. For example, a decision by a court in Green County may affect future court cases in Green County, but it has no bearing on the law in any other county. Local laws can be found in local courthouses, in local libraries, and in state government libraries. Local laws may also be accessed via the World Wide Web.

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LAW AND LITERATURE

An interdisciplinary study that examines the relationship between the fields of law and literature, with each field borrowing insights and methods of analysis from the other.

Taught as a comparative studies course in many academic settings, the law and literature curriculum was developed by members of academia and the legal profession who hoped to make law a more humanistic enterprise.

Law and literature is a burgeoning field of comparative learning. During the 1990s entire scholarly journals were dedicated to the subject. From the mid-1980s to the mid-1990s, state and national bar associations sponsored many theatrical re-creations of legal questions presented in classic works of literature, including those written by William Shakespeare and Charles Dickens.

The Greek philosopher Plato recognized a relationship between law and literature more than two thousand years ago, writing, "A society's law book should, in right and reason, prove, when we open it, far the best and finest work of its whole literature." In the United States, Plato's works were read along with other classic works of literature as part of the general education of most professionals during the eighteenth and nineteenth centuries. Following the U.S. CIVIL WAR (1861–65), however, law was seen less as a humanity and more as a science, and the classic works of Western literature played a lesser role in the education of members of the legal profession.

In 1908 the connection between law and literature was reexamined by the preeminent legal scholar JOHN H. WIGMORE, who noted the prevalence of trials and legal themes in many of the world's famous novels (see Wigmore 1908, 574). In 1925 Justice BENJAMIN N. CARDOZO, of the U.S. Supreme Court, published in the *Yale LAW REVIEW* a groundbreaking article titled "Law and Literature," which examined the literary styles of judicial opinions.

In the 1960s and 1970s the ideas of Wigmore and Cardozo formed the foundation of the modern law and literature movement. During this period law was widely perceived as a myopic, rule-oriented vocation that lacked basic human qualities such as sympathy and empathy. A growing number of law students, lawyers, and judges became disenchanted with the limited perspective of their profession, and began exploring other fields of learning for enlightenment. At the same time, high school teachers, college professors, and graduate students began to migrate from the humanities to the legal profession in search of more practical employment opportunities.

Law and literature studies are separated into three areas. The first area involves law *in* literature. This area focuses on the legal themes depicted in novels and other literary works. These fictionalized accounts are used as a prism through which actual proceedings in U.S. courtrooms are scrutinized.

The second area involves law *as* literature. This area studies the educational aspects of actual trials that involve recurring legal disputes over issues such as race relations and the proper role of law enforcement in a free society. This second area of study also analyzes the prose and rhetoric that judges use to explain the legal arguments and conclusions in their judicial opinions.

The third area focuses on law *and* literature. It compares and contrasts the analytical tools each discipline employs when interpreting a particular text, whether it be a CONSTITUTION, a statute, a judicial precedent, or a work of literature.

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CROSS REFERENCES

Jurisprudence; Legal Education.

LAW DAY

The date prescribed in a bond, mortgage, or deed for payment of the debt; the maturity date. May 1st, observed in schools, public assemblies, and courts, in honor of our legal system.

In regard to real property, the law day is the final date fixed by the court on which the debtor can pay off the mortgage debt, redeem the real estate, and prevent it from being sold after FORECLOSURE proceedings are commenced.

The definition of law day, also known as law date, varies from jurisdiction to jurisdiction. Some states define law day as the actual DUE DATE of the mortgage or any day thereafter until foreclosure, whereas others view the date of foreclosure and law day as synonymous. In some jurisdictions, the day fixed in the contract for the closing of title is the law day.

LAW FRENCH

A corrupt French dialect used by English lawyers from after the Norman Conquest in 1066 until slightly after the end of the Restoration period in 1688.

By the mid–thirteenth century, many of the English gentry and some commoners spoke French, and the language was used in the king's courts and in printed legal materials. After England's wars with France during the reign of Edward III (1327–77), schools no longer taught French. Oral French in the courts was thereafter mostly confined to recitation of formal pleadings, and thus lost grammatical sophistication and suffered a drastic decline in vocabulary.

Law French was primarily a written language and was pronounced as if it were English. It persisted because of tradition and because most of the books in lawyers' libraries were printed in French or in Latin. It also functioned as a form of shorthand for lawyers to use in recording legal propositions. In other words, spoken English was transcribed in French. This use resulted in an artificial technical vocabulary, uncorrupted by the vicissitudes of vernacular English usage. The names of everyday things became increasingly Anglicized, but law French terminology formed the cornerstone of the common-law vocabulary. Some of the words still used in the early 2000s are *appeal, arrest, assault, attainder, counsel, covenant, debtor, demand, disclaimer, escrow, heir, indictment, joinder, lessee,* LARCENY, *merger,* NEGLIGENCE, *nuisance, ouster, proof, remainder, tender, suit, tort, trespass,* and *verdict.*

By the mid–Tudor period, in the mid–sixteenth century, the active law French vocabulary consisted of fewer than a thousand words; English was freely substituted for French when the writer's knowledge of French proved inadequate. In 1650 Parliament enacted a statute prohibiting the use of law French in printed books. At the beginning of the Restoration, in 1660, the law was treated as void and there was a widespread, albeit short-lived, reversion to law French. Law French gradually died in the ensuing years. It appears that the last ENGLISH LAW book written in law French was published in 1731. Sir John Comyn, Chief Baron of the Court of Exchequer, wrote his *Digest* in law French but the work was translated into English for its posthumous publication in 1762.

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LAW JOURNAL

A magazine or newspaper that contains articles, news items, comments on new laws and case decisions, court calendars, and suggestions for practicing law, for use by attorneys.

LAW MERCHANT

The system of rules and customs and usages generally recognized and adopted by traders as the law for the regulation of their commercial transactions and the resolution of their controversies.

The law merchant is codified in the UNIFORM COMMERCIAL CODE (UCC), a body of law, which has been adopted by the states, that governs mercantile transactions.

LAW OF NATIONS

The body of customary rules that determine the rights and that regulate the intercourse of independent countries in peace and war.

CROSS REFERENCE

International Law.

LAW OF THE CASE

The principle that if the highest appellate court has determined a legal question and returned the case to the court below for additional proceedings, the question will not be determined differently on a subsequent appeal in the same case where the facts remain the same.

The law of the case expresses the rule that the final judgment of the highest court is the final determination of the rights of the parties. The doctrine of "law of the case" is one of policy only, however, and will be disregarded when compelling circumstances require a redetermination of the point of law decided on the prior appeal. Such circumstances exist when an intervening or contemporaneous change in the law has transpired by the establishment of new precedent by a controlling authority or the overruling of former decisions.

Courts have ruled that instructions—directions given by the judge to the jury concerning the law applicable to the case—are the "law of the case" where the appealing defendant, the petitioner, accepted the instructions as correct at the time they were given.

LAW OF THE LAND

The designation of general public laws that are equally binding on all members of the community.

The law of the land, embodied in the U.S. CONSTITUTION as DUE PROCESS OF LAW, includes all legal and equitable rules defining HUMAN RIGHTS and duties and providing for their protection and enforcement, both between the state and its citizens and between citizens.

LAW OF THE SEA

The law of the sea is that part of public international law that deals with maritime issues.

The term *law of the sea* appears similar to the term *maritime law,* but it has a significantly different meaning. Maritime law deals with jurisprudence that governs ships and shipping and is concerned with contracts, torts, and other issues involving private shipping, whereas the law of the sea refers to matters of public INTERNATIONAL LAW.

Many topics are contained within the law-of-the-sea concept. These include the definition of a state's territorial waters, the right of states to fish the oceans and to mine underneath the oceans, and the rights of states to control navigation.

The area outside a state's territorial waters, commonly known as the high seas, was traditionally governed by the principle of freedom of the seas. On the one hand, this meant freedom for fishing, commercial navigation, travel, and migration by both ships and aircraft; freedom for improvement in communication and supply by the laying of submarine cables and pipelines; and freedom for oceanographic research. On the other hand, it meant freedom for naval and aerial warfare, including interference with neutral commerce; freedom for military installations; and freedom to use the oceans as a place to dump wastes. Until WORLD WAR II, these freedoms continued to be applied to the oceans and airspace outside the states' three-mile territorial limit, with little regulation of abuses other than what could be found in the customary regulations of warfare and neutrality.

Since the 1950s the UNITED NATIONS has attempted to convince nations to agree to a set of rules that will govern the law of the sea. The First U.N. Conference on the Law of the Sea, which was held in Geneva in 1958, led to the CODIFICATION of four treaties that dealt with some areas of the law of the sea. In the 1970s the Third U.N. Conference on the Law of the Sea began its work. The conference labored for more than ten years on a comprehensive treaty that would codify international law concerning territorial waters, sea lanes, and ocean resources.

On December 10, 1982, 117 nations signed the U.N. Convention on the Law of the Sea, in Montego Bay, Jamaica. The convention originally was not signed by the United States, the United Kingdom, and 28 other nations, because of objections to provisions for seabed mining, which they believe would inhibit commercial development.

The convention, which went into effect November 16, 1994, claims the minerals on the ocean floor beneath the high seas as "the common heritage of mankind." The exploitation of minerals is to be governed by global rather than national authority. Production ceilings have been set to prevent economic harm to land-based producers of the same minerals. There have been continuing negotiations with the United States and other nations to resolve this issue, which is the only serious

obstacle to universal acceptance of the treaty. A 1994 agreement amended the mining provisions, which led the United States to submit the treaty to the U.S. Senate for ratification. Despite this amendment and pressure to sign the treaty, the U.S. Senate has not ratified the amendment or the CONSTITUTION. As of August 2009, a total of 158 nations had signed the treaty, including the United Kingdom in 1997.

A major change under the convention is its extension of a state's territorial waters from 3 to 12 nautical miles. Foreign commercial vessels are granted the right of innocent passage through the 12-mile zone. Beyond the zone all vessels and aircraft may proceed freely. Coastal nations are granted exclusive rights to the fish and marine life in waters extending 200 nautical miles from shore. Every nation that has a continental shelf is granted exclusive rights to the oil, gas, and other resources in the shelf up to 200 miles from shore.

Any legal disputes concerning the treaty and its provisions may be adjudicated by the new Tribunal for the Law of the Sea, by arbitration, or by the INTERNATIONAL COURT OF JUSTICE.

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CROSS REFERENCES

Admiralty and Maritime Law; Environmental Law; Fish and Fishing; Mine and Mineral Law; Navigable Waters; Pollution

LAW REPORTS

Published volumes of the decisions of courts.

Usually, opinions in cases are promptly published in unbound ADVANCE SHEETS just after they are handed down. They are subsequently collected into bound reporters when there are enough to fill a volume. Volumes are numbered in chronological order, and cases are found by referring to volume and page numbers in the citation for each case. Many law reports are also offered in CD-ROM format, or provided as part of such online services as WESTLAW and LEXIS.

LAW REVIEW

A law school publication containing both case summaries written by student members and scholarly articles written by law professors, judges, and attorneys. These articles focus on current developments in the law, case decisions, and legislation. Law reviews are edited generally by students, and students contribute notes to featured articles.

The first law review was established in 1875 as a means for law students to enhance legal scholarship. By 2003 law schools published more than 800 different law review titles, and the number continues to grow. The majority of law schools in the United States now produce at least one student-edited law review. With 14, Harvard University produces the most student-edited law reviews and journals, including the *Harvard Law Review.* Most schools publish general periodicals, covering any topic of current interest. Many produce publications that focus on a particular area of the law. Harvard, for example, publishes 11 special-focus law reviews. Among the most popular topics of special-focus law reviews are INTERNATIONAL LAW, comparative law, and ENVIRONMENTAL LAW.

The law review is an offshoot of the treatise, which was the principal form of legal writing in the 1800s and was frequently used to teach the law. Legal scholars wrote treatises to discuss legal principles and the cases that illustrated those principles. By the mid-1800s several significant U.S. treatises covered individual topic areas, including evidence, CRIMINAL LAW, damages, and contracts. These treatises became the basis of legal education.

In the mid-1800s it also became important for lawyers to know more specifically how judges were RULING in their own jurisdiction. This need led to the growth of regionally specific periodicals produced by attorneys to discuss the legal issues pertinent to their local area. The *American Law Register,* started in Philadelphia in 1852, was the first legal periodical that took a scholarly look at the law, rather than the journalistic slant of earlier periodicals. This publication and the *American Law Review,* from Boston, were the primary inspirations for the student-edited law review.

The first student-edited law review was the *Albany Law School Journal,* which lasted only one year, through 1875. This law review

contained articles, moot court arguments, and a calendar of law school events. The first issue included a student commentary that questioned whether, after a lecture, it was better for a student to read the cases discussed in the lecture or to read treatises on the topic discussed.

The next law review, Columbia Law School's *Columbia Jurist,* did not appear until 1885. This publication lasted only three years but inspired the *Harvard Law Review.*

Established in 1887, the *Harvard Law Review* is still published and is among the most prestigious, most emulated student-edited law review. Before starting their law review, Harvard students approached the faculty to get support for their new venture. Professor JAMES BARR AMES became their adviser and mentor, and other faculty members provided articles for publication. For financial assistance, the students approached alumnus LOUIS D. BRANDEIS, who provided money as well as the names of others who would contribute. The students also sold more than 300 subscriptions in the New York City area by the time the first issue was published. The first issue included articles, student news, moot court arguments, case digests, book reviews, and summaries of class lectures. The editors also used the law review to promote the new method of instruction that had recently been introduced at Harvard. This method combined the use of casebooks and Socratic dialogue—quite a change from the traditional method of textbooks and lectures. The Harvard method of instruction is standard in today's law schools.

By 1906 law schools at Yale, Pennsylvania, Columbia, Michigan, and Northwestern all published student-edited law reviews. With Harvard, these schools were considered the top law schools in the United States. Because they were publishing law reviews, doing so became a status symbol, and many law schools followed suit. The significance of the law review soon extended beyond the halls of academia as judges began citing articles in their decisions.

In the early twenty-first century, the vast number of general and specialty law reviews published around the country cover topics in virtually all areas of practice, from broad areas of law, such as criminal law and INTELLECTUAL PROPERTY, to more specialized topics, such as women's issues, air and space law, and computer law. Published pieces range from examinations of legal trends in a particular legal area, to analyses of a single case and its implications, to speeches by and about important legal figures.

As law reviews have grown in number and variety, they have become important sources for legal research. The full text of many recent law reviews is available through such electronic resources as WESTLAW and LEXIS®. Moreover, many law schools provide either the full text or abstracts of law review articles through their schools' Web sites. Some publications, such as the *Richmond Journal of Law and Technology,* are available exclusively in an online format.

Although law reviews were historically edited by law students only, there is an increasing trend to publish them in conjunction with other entities, such as the AMERICAN BAR ASSOCIATION (ABA). For example, students at the Washington College of Law publish the *Administrative Law Review* (ALR) in conjunction with the Administrative Law and Regulatory Practice Section of the ABA. Another example is *The International Lawyer,* which is a joint publication of the ABA's Section of International Law and Practice and the Southern Methodist University School of Law (SMU).

There is also a growing trend toward peer-review law journals. Peer-reviewed law journals differ from traditional law reviews in that articles selected for publication are sent to experts in the field for comment on, for example, the article's scholarship, relevance, and appropriateness for the publication. Traditional law reviews instead rely upon the editor's discretion in examining these criteria. An example of such a publication is the *Real Property, Trust & Estate LAW JOURNAL* (RPTE Law Journal). The RPTE is a peer-reviewed law journal published by the ABA's Section of Real Property, Trust and Estate Law, which is edited by students at the University of South Carolina School of Law.

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CROSS REFERENCE

Case Method.

LAW SCHOOL ADMISSION TEST

The Law School Admission Test (LSAT) was first given in 1948 and started to gain prominence in the late 1960s. By the 1980s, when the number of applications to law schools began to rise, it became a standard part of the law school admission process. The test is administered by the Law School Admission Council (LSAC), which is a nonprofit, nonstock corporation with 193 member law schools in the United States and Canada. All members require the LSAT as part of the admission process.

The LSAT is a half-day, six-part test that contains one 30-minute writing sample and five 35-minute multiple-choice sections. The writing sample is not scored, but is sent to each school to which the student applies. One of the multiple-choice sections (the taker does not know which one) is not scored, but is used to test possible future questions.

The multiple-choice sections are organized into different types of questions: reading comprehension, critical reasoning, and analysis of others' reasoning. These sections are designed to test skills that are important in law school, such as the ability to read complex text with accuracy and draw inferences.

Law schools use applicants' LSAT scores, along with other criteria, to decide whom to admit. Some schools require a minimum LSAT score for acceptance. Others use a formula in which the LSAT score is multiplied and then added to the undergraduate grade point average for a total score that helps them decide which students to admit. Still others use the LSAT score to help them make their decision, but have no hard-and-fast rules regarding a minimum score.

Like all standardized tests, the LSAT is intended to be a fair, objective test of the abilities of prospective law students. Most data indicate that the score on the LSAT is a reliable predictor for success during the first year of law school, although it may not be in an individual case.

Since the 1970s, the main criticism of the LSAT has come from those who think the test is biased against women and minorities. These critics assert that the information in the test questions, as well as the perspective of the test as a whole, caters to a white male background and viewpoint. A 1995 study by the LSAC showed that women tend to score lower than men on the LSAT and perform slightly below men in their first year of law school. Despite the criticism, the LSAT continues to be a primary gatekeeper to law school and the legal profession.

More recently, critics have emerged questioning the forthrightness of some law schools in providing prospective students with accurate facts regarding alumni job placement and compensation rates, suggesting that certain law schools may be distorting their statistics in order to attract students to their institutions. In particular, many law school graduates—particularly at lower-ranked schools—suggest that their schools utilized correct, but misleading, statistics to attract students. An example of this would be citing the mean graduate salary, instead of the median; whereas the median salary of law graduates in the U.S. is approximately $62,000, the mean could be inflated somewhat by a relatively small concentration of graduates earning starting salaries well above the median.

Even when students are able to find jobs at the top-paying law firms, some say that minority law school graduates have difficulty advancing their careers. In October 2007, the law student organization Building a Better Legal Profession released data revealing the relatively small number of females, African Americans, Hispanics, and Asian Americans employed as lawyers by America's top law firms. The group then sent the information to top law schools around the country, encouraging prospective students to take these demographic data into account when choosing where to go to law school and later work after graduation.

CROSS REFERENCE

Legal Education.

LAWFUL

Licit; legally warranted or authorized.

The terms *lawful* and *legal* differ in that the former contemplates the substance of law, whereas the latter alludes to the form of law. A lawful act is authorized, sanctioned, or not

forbidden by law. A legal act is performed in accordance with the forms and usages of law, or in a technical manner. In this sense, *illegal* approaches the meaning of *invalid.* For example, a contract or will, executed without the required formalities, might be regarded as invalid or illegal, but could not be described as unlawful.

The term *lawful* more clearly suggests an ethical content than does the word *legal.* The latter merely denotes compliance with technical or formal rules, whereas the former usually signifies a moral substance or ethical permissibility. An additional distinction is that the word *legal* is used as the synonym of constructive, while *lawful* is not. *Legal fraud* is fraud implied by law, or made out by construction, but *lawful fraud* would be a contradiction in terms. *Legal* is also used as the antithesis of equitable, just. As a result, *legal estate* is the correct usage, instead of *lawful estate.* Under certain circumstances, however, the two words are used as exact equivalents. A *lawful* writ, warrant, or process is the same as a *legal* writ, warrant, or process.

LAWRENCE V. TEXAS

The Supreme Court issued a landmark decision in *Lawrence v. Texas,* 539 U.S., 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003), striking down state SODOMY laws as applied to gays and lesbians. In the 6–3 decision, five justices overturned a 1986 RULING that had given states the right to criminalize sodomy and announced that homosexuals as well as heterosexuals enjoy a FUNDAMENTAL RIGHT to conduct their intimate relations without interference by the state. The decision elated gay rights advocates and outraged conservative groups that warned the decision set the stage for legalizing gay MARRIAGE. In a stinging dissent, Justice ANTONIN SCALIA accused the majority of adopting the "homosexual agenda."

John Geddes Lawrence and Tyron Garner were charged with violating a Texas CRIMINAL LAW that made it a crime for same-sex couples to engage in oral and anal intercourse. A police officer had entered their apartment after a neighbor made a false report of a disturbance; the officer observed the couple having sex and charged them with the crime. They pleaded no contest to the charges and were fined $200 and assessed court costs. They appealed to the Texas Court of Appeals and Criminal Court of Appeals, arguing that the law violated the Due Process and EQUAL PROTECTION Clauses of the FOURTEENTH AMENDMENT. They pointed out that the law only applied to acts committed by homosexuals. The Texas courts rejected these arguments, relying on the Supreme Court's 1986 ruling in *Bowers v. Hardwick,* 478 U.S. 186, 106 S. Ct. 2841, 92 L. Ed. 2d 140 (1986). In *Bowers,* the Court voted 5–4 to uphold a Georgia criminal sodomy statute. It reasoned that there had been a long legal and moral tradition against acts of sodomy and homosexuality. Therefore, homosexuals did not have a constitutional right to commit sodomy. The decision had been severely criticized by legal commentators and state supreme courts, which had overturned sodomy statutes based on state CONSTITUTION due process clauses. When the Supreme Court agreed to hear the Texas case, it became clear that members of the Court had second thoughts as well.

John Geddes Lawrence and Tyron Garner, petitioners in the 2003 U.S. Supreme Court case Lawrence v. Texas.
AP IMAGES

Justice ANTHONY KENNEDY, writing for the five-member majority, overturned the *Bowers* precedent, but more importantly made a strong statement on behalf of the CIVIL RIGHTS of gays and lesbians. Justice Kennedy stated that Texas had intruded on the "liberty of the person both in its spatial and more transcendent dimensions" when it prosecuted the two men for committing sodomy. He noted that they were adult men who,

> with full and mutual consent from each other, engaged in sexual practices common

> to a homosexual lifestyle. The petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private sexual conduct a crime.

Kennedy based his legal analysis on a set of substantive due process rulings dealing with BIRTH CONTROL and ABORTION, including the controversial decision in ROE V. WADE, 410 U.S. 113 (1973). Under the Fourteenth Amendment's Due Process Clause, the Court has found certain unwritten but fundamental liberty interests that the state cannot restrict. These cases made clear that the Due Process Clause "has a substantive dimension of fundamental significance in defining the rights of the person." Therefore, women have a right to make decisions affecting their destiny and married and unmarried couples may make decisions about birth control. This line of cases mandated that private sex acts between mutually consenting adults deserved similar protection. However, to do that the Court had to discredit and reverse the *Bowers* precedent.

Justice Kennedy dissected the reasoning in *Bowers* and found it weak and unsubstantiated. In that case, the majority had concluded that the issue at stake was solely the right of homosexuals to commit acts of sodomy. Kennedy disagreed, finding that the true issue had been the state's attempt to control personal relationships through the criminal law. He declared that as a general rule the state should not attempt to "define the meaning of the relationship or to set its boundaries absent injury to a person or abuse of an institution the law protects." If homosexuals wish to their express their sexuality in certain conduct the Constitution allows them "the right to make the choice." Kennedy concluded that the *Bowers* majority had misread history. Sodomy laws directed at homosexuals had only been enacted since the 1970s and that only nine states had done so. Moreover, sodomy laws in general had not been enforced against heterosexuals or homosexuals when the acts took place in private. Though traditional religious and cultural beliefs argued against the morality of homosexual conduct, these considerations had no bearing on the legal issue before the Court.

Kennedy pointed out that laws against sodomy had fallen out of favor. In 1961 all 50 states had such laws, but by 2003 only 13 survived. Of these laws, four enforced laws only against homosexual conduct. In addition, laws against homosexual sodomy had been struck down in Great Britain and by the European Court of HUMAN RIGHTS. Therefore, the historical and cultural underpinnings of *Bowers* had been wrong. The majority therefore overturned that precedent and declared a due process right to consensual, intimate conduct. In so ruling the majority rejected an alternate argument based on the Equal Protection Clause. That argument would have struck down the Texas law solely because it applied to acts committed by homosexual but not heterosexuals. Justice Kennedy declined to employ this analysis because it might lead to the redrafting of the law to ban sodomy by "same-sex and different-sex participants." This statement implied that all sodomy laws are unconstitutional.

Justice Sandra Day O'Connor, who had voted with the majority in *Bowers*, voted to strike down the Texas law on the equal protection grounds rejected by the majority.

Justice Antonin Scalia's dissent, which was joined by Chief Justice WILLIAM REHNQUIST and Justice CLARENCE THOMAS, was based on the conclusion that states should be allowed to legislate their criminal codes. The Supreme Court had no business announcing substantive due process rights that essentially endorsed the personal values of a group of justices. In addition, Scalia argued that the majority had "effectively decree[d] the end of all morals legislation" and would create the opportunity for "judicial imposition of homosexual marriage, as has recently occurred in Canada."

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CROSS REFERENCE

Gay and Lesbian Rights.

LAWS AND LIBERTIES OF MASSACHUSETTS

See WARD, NATHANIEL.

LAWSUIT

A popular designation of a legal proceeding between two parties in a court of law, instituted by one party to compel another to do himself or herself justice, regardless of whether the action is based upon law or equity. A generic term referring to any proceeding brought by one or more plaintiffs against one or more defendants in a court of law. During the lawsuit, the plaintiff pursues a remedy that guarantees the enforcement of a right or provides for the redress of an injury allegedly caused by the defendant. Typically, lawsuits only refer to civil proceedings, and not criminal prosecutions or administrative hearings.

CROSS REFERENCE

Action.

LAWYER

A person, who through a regular program of study, is learned in legal matters and has been licensed to practice his or her profession. Any qualified person who prosecutes or defends causes in courts of record or other judicial tribunals of the United States, or of any of the states, or who renders legal advice or assistance in relation to any cause or matter. Unless a contrary meaning is plainly indicated this term is synonymous with attorney, attorney at law, or counselor at law.

Each of the 50 states employs admissions committees or boards to review the backgrounds of prospective attorneys before they are admitted to practice. Each state also has adopted codes of conduct or DISCIPLINARY RULES and has appointed adjudicative boards to address ATTORNEY MISCONDUCT. But these measures only weed out or discipline those who have violated laws or those who are otherwise unfit to practice law. They have done little to address the day-to-day civility and conduct of attorneys in their practice. In that regard, the behavior and conduct of peers and colleagues within the profession often impose more palpable influences on newly practicing attorneys than any standards or codes of ethics that they may have learned in law school.

A focus of a new movement in several states is not only to crack down on professional misconduct *per se*, but also to stem borderline conduct before it becomes an ethical violation. U.S. Supreme Court Chief Justice WILLIAM REHNQUIST, addressing new graduates from the University of Virginia School of Law in June 2001, remarked that incivility remained one of the greatest threats to the ideals of American justice and to the public's trust in the law. The conduct of former president BILL CLINTON was considered to have seriously contributed to the harming of public confidence and trust in the legal profession because of his subjective approach to answering questions under oath and other improprieties associated with the legal aspects of his administration.

The AMERICAN BAR ASSOCIATION (ABA) and lawyers' groups in more than a dozen states have joined in the movement to improve not only civility and courtesy among lawyers, but also the public's perception of the profession. Ultimately, the goal of these efforts is to ensure that attorneys have an unequivocal, current, and realistic standard of conduct and ethics to rely upon as a valid guide for their profession.

LAWYER-WITNESS RULE

The principle that prohibits an attorney from serving as an advocate and a witness in the same case. Also known as the advocate-witness rule, *it keeps attorneys from being placed in a situation that could at best create a conflict of interest for both themselves and their clients. It also keeps adversary attorneys from having to cross-examine opposing counsel in front of a jury at trial. Attorneys are allowed to serve as witnesses if their testimony is about factual matters that have no bearing on the case; likewise, they are allowed to remain as counsel if their removal from the case would create a substantial hardship for the client. The rule does not prohibit attorneys from being witnesses in general, nor does it prohibit an attorney-witness from assisting in a client's case, for example by acting as a consultant or attending depositions.*

LAY

Nonprofessional, such as a lay witness who is not a recognized expert in the area that is the subject of the person's testimony. That which relates to persons or entities not clerical or ecclesiastical; a person not in ecclesiastical orders. To present the formal declarations by the parties of their respective claims and defenses in pleadings. A share of the profits of a fishing or whaling voyage, allotted to the officers and seamen, in the nature of wages.

LAYAWAY

An agreement between a retail seller and a consumer that provides that the seller will retain designated

consumer goods for sale to the consumer at a specified price on a future date, if the consumer deposits with the seller an agreed upon sum of money.

LEADING CASE

An important judicial decision that is frequently regarded as having settled or determined the law upon all points involved in such controversies and thereby serves as a guide for subsequent decisions.

BROWN V. BOARD OF EDUCATION OF TOPEKA, KANSAS, 347 U.S. 483, 74 S.Ct. 686, 98 L. Ed. 873 (1954), which declared racial segregation in public schools to be in violation of the EQUAL PROTECTION Clause of the FOURTEENTH AMENDMENT to the U.S. CONSTITUTION, is an example of a leading case.

LEADING QUESTION

A query that suggests to the witness how it is to be answered or puts words into the mouth of the witness to be merely repeated in his or her response.

Leading questions should not be used on the DIRECT EXAMINATION of a witness unless necessary to develop the person's testimony. They are permissible, however, on CROSS-EXAMINATION. When a party calls a hostile witness—the adverse party or a witness identified with the opposing party—leading questions can be employed during the direct examination of such a witness.

LEAGUE OF NATIONS

The LEAGUE OF NATIONS is an international CONFEDERATION of countries, with headquarters in Geneva, Switzerland, that existed from 1920 to 1946, its creation following WORLD WAR I and its dissolution following WORLD WAR II. Though the League of Nations was a flawed and generally ineffective organization, many of its functions and offices were transferred to the UNITED NATIONS, which benefited from the hard lessons the league learned.

President WOODROW WILSON, of the United States, was the architect of the League of Nations. When the United States entered World War I on April 6, 1917, Wilson sought to end a war that had raged for three years and to begin constructing a new framework for international cooperation. On January 8, 1918, he delivered an address to Congress that named fourteen points to be used as the guide for a peace settlement. The fourteenth point called for a general association of nations that would guarantee political independence and territorial integrity for all countries.

Following the November 9, 1918, armistice that ended the war, President Wilson led the U.S. delegation to the Paris Peace Conference. Wilson was the only representative of the Great Powers—which included Great Britain, France, and Italy—who truly wanted an international organization. His power and influence were instrumental in establishing the League of Nations.

Although Wilson was the architect of the league, he was unable to secure U.S. Senate ratification of the peace treaty that included it. He was opposed by isolationists of both major political parties who argued that the United States should not interfere with European affairs, and by Republicans who did not want to commit the United States to supporting the league financially. The treaty was modified several times, but was nevertheless voted down for the last time in March 1920.

Despite the absence of the United States, the League of Nations held its first meeting on November 15, 1920, with 42 nations represented. The CONSTITUTION of the league was called a covenant. It contained 26 articles that served as operating rules for the league.

The league was organized into three main branches. The council was the main peacekeeping agency, with a membership that varied from eight to 14 members during its existence. France, Germany, Great Britain, Italy, Japan, and the Soviet Union held permanent seats during the years they were members of the league. The remainder of the seats were held by smaller countries on a rotating basis. Peacekeeping recommendations had to be made by a unanimous vote.

The assembly was composed of all members of the league, and each member country had one vote. The assembly controlled the league's budget, elected the temporary council members, and made amendments to the covenant. A two-thirds majority vote was required on most matters. When a threat to peace was the issue, a majority vote plus the unanimous consent of the council was needed to recommend action.

The League of Nations Disarmament Conference met in September 1924 to discuss the reduction of military armaments following World War I. The United States was never a member. BETTMANN/CORBIS.

The secretariat was the administrative branch of the league. It was headed by a secretary general, who was nominated by the council and approved by the assembly. The secretariat consisted of more than 600 officials, who aided peacekeeping work and served as staff to special study commissions and to numerous international organizations established by the league to improve trade, finance, transportation, communication, health, and science.

President Wilson and others who had sought the establishment of the league had hoped to end the system of interlocking foreign alliances that had drawn the European powers into World War I. The league was to promote collective security, in which the security of each league member was guaranteed by the entire league membership. This goal was undermined by the covenant because the council and the assembly lacked the power to order members to help an attacked nation. It was left up to each country to decide whether a threat to peace warranted its intervention. Because of this voluntary process, the league lacked the authority to quickly and decisively resolve armed conflict.

This defect was revealed in the 1930s. When Japan invaded Manchuria in 1933, the League of Nations could only issue condemnations. Then, in 1935, Italy, under BENITO MUSSOLINI, invaded Ethiopia. Ethiopia appeared before the assembly and asked for assistance. Britain and France, unwilling to risk war, refused to employ an oil embargo that would have hurt the Italian war effort. In May 1936 Italy conquered the African country.

The league also lost key member states in the 1930s. Japan left in 1933, following the Manchurian invasion. Germany, under the leadership of ADOLF HITLER, also left in 1933, following the league's refusal to end arms limitations imposed on Germany after World

War I. Italy withdrew in 1937, and the Soviet Union was expelled in 1939 for invading Finland.

The beginning of World War II, on September 1, 1939, marked the beginning of the end for the League of Nations. Collective security had failed. During the war the secretariat was reduced to a skeleton staff in Geneva, and some functions were transferred to the United States and Canada. With the creation of the United Nations on October 24, 1945, the League of Nations became superfluous. In 1946 the league voted to dissolve and transferred much of its property and organization to the United Nations.

The United Nations followed the general structure of the league, establishing a security council, a general assembly, and a secretariat. It had the benefit of U.S. membership and U.S. financial support, two vital elements denied the League of Nations.

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LEAGUE OF UNITED LATIN AMERICAN CITIZENS

The League of United Latin American Citizens (LULAC) is the oldest organization of Hispanic Americans in the United States. With a membership of approximately 115,000, the organization uses education and advocacy to improve living conditions and seek advances for all Hispanic nationality groups. Headquartered in Washington, D.C., LULAC has thousands of members organized in more than 700 LULAC Councils in 48 states and in Puerto Rico.

The original mission and purpose of LULAC was similar to that of the National Association for the Advancement of Colored People (NAACP), which was founded in 1909 to aid African Americans in their struggle against racial discrimination. Hispanic Americans, at the time mostly immigrants to the United States from Mexico, faced similar prejudice and discrimination based on the color of their skin and the fact that they spoke Spanish.

The period following the Civil War brought about a backlash that affected both freed slaves and persons who had emigrated from Mexico to the United States seeking work and a better life. According to one source, between 1865 and 1920 more Mexicans were lynched in the Southwestern part of the United States than African Americans in the Southern states. Juries refused to convict Caucasians (known to Hispanic Americans as *Anglos*) who committed crimes against Mexicans, including MURDER.

Signs reading "No Mexicans Allowed" were common in many states. Economic and social forms of discrimination were pervasive. Mexican Americans were not permitted to use public accommodations used by Anglos such as drinking fountains or to be served in Anglo restaurants, hotels, or theaters. The schools that were open to Mexicans were inferior to those provided for Anglos. Many Mexican children who worked alongside their parents picking crops received little or no education. Housing was severely substandard, and public services such as streetlights and water and sewer systems were of poor quality or nonexistent in Hispanic neighborhoods.

In the late 1920s several organizations dedicated to fighting discrimination against Mexicans and other Hispanic people began the work of creating a united organization. In February 1929 the League of United Latin American Citizens was created. Over the next 20 years, LULAC organizers faced harassment and intimidation. They were labeled Communists, some were beaten, and others were arrested and jailed.

Despite these tactics, the organization continued to gain strength by disseminating information about citizenship and voting rights, launching CLASS ACTION lawsuits to fight for integration in housing, for education, and for access to improved work conditions. In 1954 LULAC won a landmark case, *Hernandez v. State of Texas* (347 U.S. 475, 74 S. Ct. 667, 98 L. Ed. 866 [1954]), when the Supreme Court ruled that the prohibition of Mexican Americans from juries was unconstitutional.

In the early 2000s LULAC continued to grow. The organization represented Latino men and women who were legal residents of the United States or its territories. (The term *Latino*

is used to encompass Chicanos, Mexicans, Latin Americans, and others of Hispanic origin.)

Through its National Educational Service Centers, started in 1973, LULAC created a network of 16 counseling centers that have provided millions of dollars in scholarships as well as information, tutoring, and mentoring program for thousands of Latino students around the country. In the early 2000s, LULAC continued its fight to eliminate discrimination and to research and inform the public regarding such issues as IMMIGRATION, language (particularly its opposition to English-only initiatives), and literacy, and disparities in health care, political representation, and education. LULAC also continues to stress the need for Hispanic Americans to become citizens and to register to vote.

The organization has fostered several major national Hispanic organizations. The American GI Forum (AGIF) was formed to secure the rights of Hispanic military veterans. The Mexican American Legal Defense and Education Fund (MALDEF), which was established by LULAC in 1968, functions as the nation's most significant nonprofit legal advocate for Latinos. SER-Jobs for Progress has worked to improve economic conditions for Latinos through programs that provide job training and also retraining for displaced workers as well as affordable housing.

The growing Latino population in the United States has meant increased significance for LULAC and related organizations. In 2003 there were 6.6 million registered Latino voters in the United States, with significant concentrations in California, Texas, Florida, Illinois, and New York. By 2004, the Latino vote was avidly courted by local, state, and national politicians. In 2008 an estimated 10 million Latinos voted in the presidential election. While the Latino population is by no means monolithic, there are certain themes that resonate with all Latino groups. LULAC is well positioned to continue the fight to decrease discrimination and racism and to give Latinos increased access to better homes and to education, jobs, and health services.

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CROSS REFERENCES

Civil Rights Acts; Discrimination; Equal Protection.

LEASE

A contractual agreement by which one party conveys an estate in property to another party, for a limited period, subject to various conditions, in exchange for something of value, but still retains ownership.

A lease contract can involve any property that is not illegal to own. Common lease contracts include agreements for leasing real estate and apartments, manufacturing and farming equipment, and consumer goods such as automobiles, televisions, stereos, and appliances.

Leases are governed by statutes and by COMMON LAW, or precedential cases. Most leases are subject to state laws, but leases involving the U.S. government are subject to federal laws. Generally, federal laws on leases are similar to state laws.

A lease is created when a property owner (the offeror) makes an offer to another party (the offeree), and the offeree accepts the offer. The offer must authorize the offeree to possess and use property owned by the offeror for a certain period of time without gaining ownership. A lease must also contain consideration, which means that the offeree must give something of value to the offeror. Consideration usually consists of money, but other things of value may be given to the offeror. Finally, the offeror must deliver the property to the offeree or make the property available to the offeree. When a lease is formed, the property owner is called the lessor, and the user of the property is called the lessee.

Generally, a lease may be written or oral, but a lease for certain types of property must be in writing and signed by both parties. For example, if a lessee seeks to lease real property (land or buildings) for more than one year, the lease must be in writing. Some leases must be written, signed, and recorded in a registry of deeds. Such leases usually concern real property that will be leased for a period of more than three years.

A sample lease agreement.

Lease Agreement

1. PARTIES.

Landlord:

Name: _____

Address: _____

_____

Property Manager (Landlord's Agent):

Name: _____

Address: _____

_____

Tenants: Guarantors:

_____ _____

_____ _____

2. LEASE & PREMISES. Landlord hereby leases to Tenants and Tenants hereby lease from Landlord the premises located at _____ _____, Blacksburg, VA 24060.

3. APPLICABLE LAW. This lease shall be governed by the Virginia Residential Landlord and Tenant Act (Virginia Code Title 55, Chapter 13.2). Tenants are advised to read the Act as well as Virginia Code Title 55, Chapter 13, before signing this lease.

4. TERM. The lease shall run from _____, 20____, through _____, 20____. This lease shall neither automatically renew nor automatically convert to a month-to-month tenancy.

5. RENT. Tenants shall pay a total rent for the term of $_____, payable in installments as follows:

First month's partial rent: $_____, due on the start date of the lease;

Eleven months' full rent: $_____, due the first of each month;

Last month's partial rent: $_____, due the first of the last month.

6. LATE FEE. Tenants shall pay a late fee of 10% of any rental amount not received at the payment address by 5:00 pm on the fourth day after the date the rent is due. (If rent is due on the first, a late fee will be assessed if rent isn't received by 5:00 pm on the fifth.)

7. DISHONORED CHECKS. If a check paid by, or on behalf of, a Tenant is returned for insufficient funds or for any other reason not the fault of Landlord or Landlord's agent, Landlord may require rent payments to be made by cash, money order, cashier's check, or certified check. Tenants shall pay a service charge of $25.00 for each such returned check. This service charge is in addition to any applicable late fee that is charged.

SECURITY DEPOSIT. Landlord acknowledges that he has received the sum of $_____ from Tenants as a security deposit. (This includes any deposit required for pets.) Landlord may deduct from the security deposit the amount of damages incurred by him due to Tenants' breach of this lease. Tenants are not entitled to have the security deposit applied to unpaid rent or late fees.

8. MOVE-IN CONDITION. Landlord shall provide the first Tenant to take possession of the premises with a "Move-In/Move-Out Condition Report" form. That Tenant shall complete the form and return it to Landlord within five days. Unless Landlord objects within five days of his receipt of the completed form, the report shall be deemed conclusive evidence that the premises are as described in the report.

Landlord shall deliver the premises and all common areas to the Tenants in a clean, safe, and habitable condition, free of rodent and insect pests, free of visible mold, and with all smoke detectors, utilities, and appliances in proper working condition.

9. DELIVERY OF POSSESSION. Landlord shall be ready to deliver possession of the premises to Tenants at the start date of the tenancy. Landlord shall be responsible for having hold-over tenants evicted.

If Landlord fails to deliver possession and such failure is willful, Tenant's remedies shall be in accordance with law.

If Landlord fails to deliver possession and such failure is not willful, Landlord shall have ten days to remedy the situation and deliver possession.

10. SUBLEASES & ASSIGNMENTS. Tenants shall not sublease the premises or assign this lease without the prior, written permission of the Landlord. Landlord shall not permit a sublease or assignment without the approval of all Tenants. Landlord shall not unreasonably deny permission to sublease or assign. Landlord may charge a $32 application fee for each sublease or assignment requested and an additional $50 administrative fee for each executed sublease or assignment.

[continued]

A lease term begins when the lessee receives a copy of the lease. However, the lease need not be given directly to the lessee; it is enough that the lessee knows that the lease is in the hands of a third person acting on behalf of the lessee. A lease may also take effect when the lessee assumes control over the property.

In all states, leases dealing with commercial goods and services are strictly regulated by statute. Commercial lease laws govern the rights

A sample lease agreement (continued).

Lease Agreement

11. USE OF PREMISES. Only Tenants and Tenants' minor children are allowed to occupy the premises. Tenants shall not permit any other persons to occupy the premises. "Occupy" is defined as residing, living, or staying on the premises overnight for more than seven nights in a row or for more than fourteen nights in a twelve-month period.

Tenants shall use the premises only as a residential dwelling. Tenants shall not use the premises or permit any guests to use the premises for any unlawful activities or to unreasonably interfere with the rights, comforts, or conveniences of their neighbors or other Tenants. Tenants shall not host any party or gathering of more than fifteen (15) people at any time.

12. LANDLORD'S RULES. Tenants acknowledge receipt of Landlord's Rules. Tenants shall comply with all written Rules provided to the Tenant. Landlord may, with reasonable written notice to Tenants, modify these rules as allowed by law.

13. ATTORNEY'S FEES AND LITIGATION. If any party to this lease takes legal action against the other for breach of this lease, the prevailing party shall be entitled to a reasonable attorney's fee, in addition to any amounts awarded by the court for damages and court costs.

14. RESERVATION OF RIGHTS. If rent is unpaid when due and Tenants fail to pay rent within five days after written notice of the non-payment is provided, Landlord may terminate the lease and proceed to obtain possession of the premises in accordance with law. Acceptance of rent after the five-day period shall not act as a waiver of Landlord's rights and Landlord hereby reserves all rights to receive payment of rent after the five-day notice and proceed in court for possession of the premises and all other remedies allowed by law.

15. PROPERTY DAMAGE & MAINTENANCE. Tenants shall pay Landlord's reasonable expenses for repairing damages caused by Tenants, occupants, and guests, reasonable wear and tear excepted. For repairs made and billed during the lease term, Landlord shall provide Tenants a written, itemized bill with copies of receipts for materials purchased by Landlord and/or contractor invoices billed to Landlord. Landlord shall not charge a late fee or deduct the bill from the security deposit, unless Tenants fail to pay within fifteen days after presentment of the Landlord's bill and other required documentation.

16. NO ALTERATIONS OF THE PREMISES. Tenants shall not alter or permit any alteration of the premises. Alterations include, but aren't limited to, painting, wallpapering, structural changes, and addition or removal of fixtures (including TV antennae or satellite dish receivers). This clause pertains to any alterations made inside AND outside the premises, including changes to the surrounding land or common areas. Landlord shall not unreasonably withhold consent in the event Tenants wish to re-paint or re-wallpaper the residence, but Landlord may condition such approval on the agreement of Tenants to use specific colors or wallpaper or to restore the premises to its original condition upon the expiration or termination of the lease. The use of a reasonable number of small, picture-hanger nails shall not be considered alterations.

17. DEATH. If a Tenant dies during the tenancy, the surviving Tenants together with the executor or administrator of the decedent's estate, may jointly terminate this lease by giving forty-five days written notice of termination to Landlord. Termination under this clause does not relieve the surviving Tenants or the deceased's estate from their liability to pay all rent and charges owed through the date that Landlord is put in possession of the premises. However, if the Landlord, within fifteen days of receiving the termination notice, provides the surviving Tenants a notice that he wishes to continue the lease at reduced rent, the lease shall not be terminated but shall continue at a rental rate reduced by the deceased Tenant's pro-rata share of the rent. In this case, Landlord shall return the deceased Tenant's share of the security deposit to the executor or administrator of decedent's estate within 45 days of the decision to continue the lease.

18. EXTENDED ABSENCES & ABANDONMENT. If all of the Tenants will be absent from the premises for a period in excess of ten (10) days, Tenants shall give Landlord advance, written notice of the absence.

19. MOVE-OUT INSPECTION. Tenants may request to be at a move-out inspection to be held within seventy-two (72) hours of Tenants' delivery of possession to Landlord. Tenants' request shall made in writing at least two weeks in advance.

20. UTILITIES. Landlord shall provide [water and sewer service] without charge. Tenants shall not use these utilities in a wasteful manner. All other utilities are the responsibility of Tenants.

Tenants shall have [gas and electricity service] placed in the name(s) of one or more Tenants from the start of the tenancy until possession of the premises is returned to Landlord. Tenants shall ensure that the heat is maintained at a temperature sufficient to prevent freezing of pipes during cold periods.

21. RENTER'S INSURANCE. Landlord is not responsible for damages to Tenants' property unless caused by Landlord. Tenants are advised to obtain sufficient renter's insurance to cover the loss of their property along with sufficient liability coverage to cover accidental damage to Landlord's or neighbors' property caused by Tenants.

22. WAIVER OF BREACH. No waiver of any breach of this lease on any one occasion shall be construed to operate as a general waiver of another breach on a subsequent occasion. If any breach occurs and is later settled by the parties, this lease shall continue to bind the parties as it is written.

23. JOINT AND SEVERAL LIABILITY. All Tenants shall be jointly and severally liable for all Tenant obligations (rent, damages, and other). (The Landlord may collect the entire amount due from any Tenant, no matter which Tenant caused the damages or failed to pay their share of the rent.)

24. INCORPORATION & MODIFICATION. This Lease is the complete and entire agreement between the parties and all prior agreements and understandings, both written and oral, have been incorporated herein. It may only be modified or amended by executing another written document signed by all parties or their authorized agents.

[continued]

A sample lease agreement (continued).

ILLUSTRATION BY GGS CREATIVE RESOURCES. REPRODUCED BY PERMISSION OF GALE, A PART OF CENGAGE LEARNING.

Lease Agreement

25. SEVERABILITY. The provisions of this lease are severable, and if any part of the Lease is held illegal, invalid, or inapplicable to any person or circumstance, the remainder of this lease shall remain in effect.

26. GUARANTORS. The Guarantors hereby unconditionally guarantee payment to Landlord all amounts due or that become due from Tenants to Landlord under this lease.

27. CONDITION. This lease is conditional on being signed by all parties named on page 1.

We, the undersigned, hereby represent that we have read this entire lease and agree to be bound by its terms and conditions.

Landlord:

_____ _____

Signature Date

Tenants:

_____ _____

_____ _____

Guarantors:

_____ _____

_____ _____

and duties of lessors and lessees in leases that involve commercial goods. Most states have enacted section 2A of the UNIFORM COMMERCIAL CODE, which is a set of exemplary laws formulated by the National Conference of Commissioners on Uniform State Laws and by the American Law Institute. The laws governing commercial leases do not apply to leases of real estate, which are covered by LANDLORD AND TENANT laws.

In all states a court may void an unconscionable lease. A lease is unconscionable if it unduly favors one party over the other. For example, assume that a small-business owner leases property for 30 years in order to operate a gas station. The lease contains a clause stating that the lessor may revoke the agreement without cause and without notice. If the lessee performs his obligations under the lease, but the lessor revokes the lease without notice, the clause allowing termination without notice may be found to be unconscionable. A determination of unconscionability must be made by a judge or jury based on the facts of the case. The fact finder may consider factors such as the relative bargaining power of the parties, other terms in the lease, the purpose of the lease, and the potential loss to either party as a result of the terms of the lease.

Commercial leases must contain certain warranties. If they do not, the warranties may be read into them by a court. One such warranty is the warranty of merchantability. Generally, this warranty requires that all leased property be fit for its general purpose. For example, if a passenger vehicle leased for transportation fails to operate, this failure might be a breach of the IMPLIED WARRANTY of merchantability, and the lessee could sue the lessor for damages suffered as a result.

Another warranty implied in commercial leases is the warranty of fitness for a particular purpose. This warranty applies only if the lessor knows how the lessee plans to use the property and that the lessee is relying on the lessor's expertise in choosing the best goods or services.

A lessee may assign a lease to a third party, or assignee. An assignment conveys all rights under the lease to the assignee for the remainder of the lease term, and the assignee assumes a contractual relationship with the original lessor. However, unless the lessor agrees otherwise, the first lessee still retains the original duties under the lease agreement until the lease expires. Generally, an assignment is VALID unless it is prohibited by the lessor.

An assignment differs from a sublease. In a sublease the original lessee gives temporary rights under the lease to a third party, but the third party does not assume a contractual

relationship with the lessor. The original lessee retains the same rights and obligations under the lease, and forms a second contractual relationship with the sublessee. Like assignments, subleases generally are valid unless they are prohibited by the lessor.

If a lessor defaults on his obligations under the lease, the lessee may sue the lessor for damages. The measure of damages can vary. If a lessor breaches the lease by sending nonconforming goods, or goods that were not ordered by the lessee, the lessee may reject the goods, cancel the lease, and sue the lessor to recover any monies already paid and for damages caused by the shipment of the nonconforming goods. If the lessee defaults on obligations under the lease, the lessor may cancel the lease, withhold or cancel delivery of the goods, or lease the goods to another party and recover from the original lessee any difference between the amount the lessor would have earned under the original lease and the amount the lessor earns on the new lease.

One controversial lease is the rent-to-own lease. Under such a lease, the lessee pays a certain amount of money for a certain period of time, and at the end of the period, the lessee gains full ownership of the leased item. Rent-to-own leases are often associated with consumer goods such as televisions, stereos, appliances, and vehicles. Many rent-to-own leases provide that the lessor may regain possession and ownership of the property if the lessee defaults. Such clauses have been found to be unconscionable if they are exercised after the lessee has paid more than the market value of the leased item.

For example, assume that a party leases a television worth $300. The lease obliges the lessee to make payments of $50 a month for one year. At the end of the lease period, the lessee will have paid $600 for the television. The amount of the total payment may not be unconscionable, because the lessee gains a television without making one large payment. However, if the lessee defaults after making $550 in payments, and the lessor repossesses the television, a court may find that the lessor's actions are unconscionable and order that the television be returned to the lessee.

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CROSS REFERENCES

Rent Strike; Subletting.

LEASEBACK

A transaction whereby land is sold and subsequently rented by the seller from the purchaser who is the new owner.

LEASEHOLD

An estate, interest, in real property held under a rental agreement by which the owner gives another the right to occupy or use land for a period of time.

LEAST RESTRICTIVE MEANS TEST

The "least restrictive means," or "less drastic means," test is a standard imposed by the courts when considering the validity of legislation that touches upon constitutional interests. If the government enacts a law that restricts a fundamental personal liberty, it must employ the least restrictive measures possible to achieve its goal. This test applies even when the government has a legitimate purpose in adopting the particular law. The least restrictive means test has been applied primarily to the regulation of speech. It can also be applied to other types of regulations, such as legislation affecting interstate commerce.

In *Shelton v. Tucker,* 364 U.S. 479, 81 S. Ct. 247, 5 L. Ed. 2d 231 (1960), the U.S. Supreme Court applied the least restrictive means test to an Arkansas statute that required teachers to file annually an affidavit listing all the organizations to which they belonged and the amount of money they had contributed to each organization in the previous five years. B. T. Shelton was one of a group of teachers who refused to file the affidavit and who as a result did not have their teaching contract renewed. Upon reviewing the statute, the Court found that the state had a legitimate interest in investigating the fitness and competence of its teachers, and that the information requested in the affidavit could help the state in that investigation. However, according to the Court, the statute went far beyond its legitimate purpose because it

required information that bore no relationship to a teacher's occupational fitness. The Court also found that the information revealed by the affidavits was not kept confidential. The Court struck down the law because its "unlimited and indiscriminate sweep" went well beyond the state's legitimate interest in the qualifications of its teachers.

Two constitutional doctrines that are closely related to the least restrictive means test are the overbreadth and vagueness doctrines. These doctrines are applied to statutes and regulations that restrict constitutional rights. The overbreadth doctrine requires that statutes regulating activities that are not constitutionally protected must not be written so broadly as to restrict activities that are constitutionally protected.

The vagueness doctrine requires that statutes adequately describe the behavior being regulated. A vague statute may have a chilling effect on constitutionally protected behavior because of fear of violating the statute. Also, law enforcement personnel need clear guidelines as to what constitutes a violation of the law.

The least restrictive means test, the overbreadth doctrine, and the vagueness doctrine all help to preserve constitutionally protected speech and behavior by requiring statutes to be clear and narrowly drawn, and to use the least restrictive means to reach the desired end.

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CROSS REFERENCES

Chilling Effect Doctrine; First Amendment; Freedom of Speech; Void for Vagueness Doctrine.

LEAVE

To give or dispose of by will. Willful departure with intent to remain away. Permission or authorization to do something.

Leave of court is permission from the judge to take some action in a lawsuit that requires an absence or delay. An attorney might request a leave of court in order to file an amended pleading, a formal declaration of a claim, or a defense.

CROSS REFERENCE

Desertion.

LEDGER

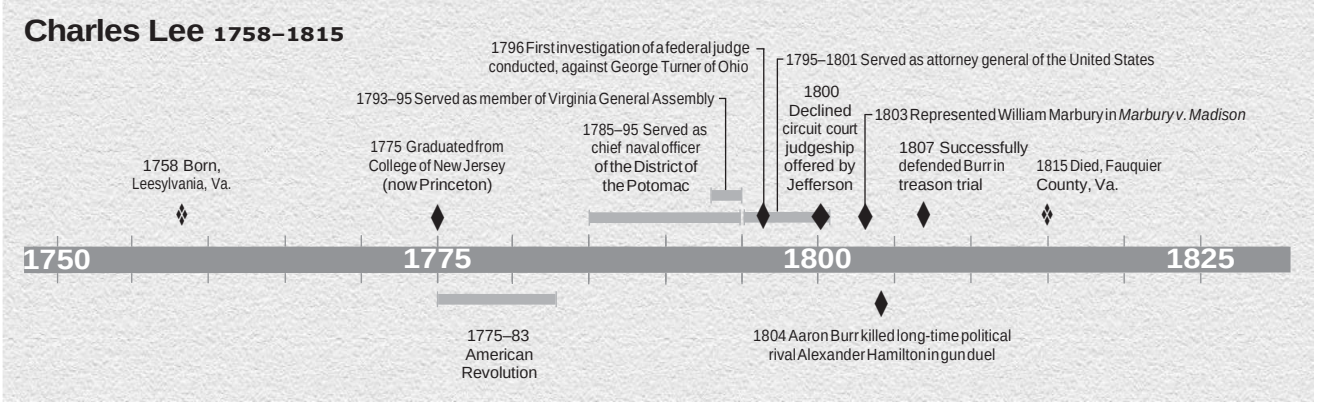
The principal book of accounts of a business enterprise in which all the daily transactions are entered under appropriate headings to reflect the debits and credits of each account.

Information that is contained in a ledger can be admitted into evidence in a lawsuit pursuant to the BUSINESS RECORD EXCEPTION of the hearsay rule.

v LEE, CHARLES

Charles Lee served as attorney general of the United States from 1795 to 1801 under presidents GEORGE WASHINGTON and JOHN ADAMS.

Lee, born in 1758 in Leesylvania, Virginia, descended from a prominent English family.



His earliest known ancestor, Lionel Lee, received a title and estate from William the Conqueror. The Lee line in the United States traced back to 1649, when Richard Lee, a member of Charles I's PRIVY COUNCIL, emigrated to help settle the Virginia colonies. Prior to the American Revolution, six of Richard Lee's descendants served simultaneously in the governing body known as the Virginia House of Burgesses; one of those descendants was Charles Lee's father, Henry Lee II.

Lee's father was a well-educated farmer with extensive landholdings in Virginia. His mother, Lucy Grymes Lee, had been admired and courted by George Washington prior to her MARRIAGE. In fact, Lee's mother continued to cultivate Washington's interest long after her marriage—and it was largely owing to her influence that Lee's brother, Henry Lee III (a future general and statesman, and father of General Robert E. Lee) and Lee himself were able to advance far and fast in their chosen careers.

Lee probably followed his brother to the College of New Jersey (later named Princeton). From the beginning, he was interested in the law. He completed his legal studies in Philadelphia under Attorney Jared Ingersoll, and he was admitted to the bar in about 1780. As a young lawyer, he served as a delegate to the CONTINENTAL CONGRESS, and he was a member of the Virginia Assembly. But Lee also maintained his family's tradition of military service. He served as chief naval officer of the District of the Potomac for more than a decade. He resigned in December 1795, when he was appointed attorney general of the United States by President Washington.

When Lee's predecessor, Attorney General WILLIAM BRADFORD, died suddenly in August 1795, Washington was faced with the difficult task of appointing the nation's third attorney general in just six years. The position had little to recommend it. It was a part-time job with no staff, little power, and many demands. Because Lee felt duty bound to repay Washington for years of family support and patronage, he honored Washington's request to take the job. He served as attorney general for the balance of Washington's term and for the entire Adams administration—from December 10, 1795, to February 18, 1801.

The role of the attorney general in Lee's time was to conduct all the suits in the Supreme Court in which the United States was a party, and to give advice and opinions to the president and Congress when requested. Because few suits had made their way to the High Court through the nation's fledgling court system, Lee did not spend much time trying cases. Some of his time was occupied with administrative responsibilities: Once in office, his first order of business was to finish a task started by Bradford, the establishment of a fee schedule for compensating federal judicial officers. The vast majority of Lee's time was spent writing opinions that would help to shape the direction of the evolving government.

The nation's first investigation of a federal judge took place in 1796 when the House of Representatives considered a petition to impeach Ohio territorial judge George Turner for criminal misconduct. Given the difficulty of conducting a long-distance impeachment proceeding, Lee was asked if there was another way to address the complaint against Turner. Lee's opinion that "a judge may be prosecuted … for official misdemeanors or crimes … before an ordinary court" cleared the way for the high court in Ohio to settle the matter.

In the 1790s it was commonly believed that insulting or defaming a representative of a foreign government was punishable by INTERNATIONAL LAW. But when Adams asked Lee if the United States could bring a libel action against the editor of *Porcupine's Gazette* for an allegedly defamatory article about a Spanish ambassador, Lee's opinion anticipated the free speech concerns of such a prosecution. Lee conceded that foreign representatives were due the respect of the U.S. citizenry, but he also noted that "the line between freedom and licentiousness of the press [had] not yet been distinctly drawn by judicial decision."

In another international matter, Lee was asked to render an opinion in a volatile extradition dispute. Jonathan Robbins was charged with MURDER on board a British ship. British authorities wanted him bound over to face the charges, but he fought extradition, claiming that he was a U.S. citizen who had been imprisoned on the ship. Lee and Secretary of State Timothy Pickering argued that the treaty governing extradition did not apply to crimes committed on the high seas; thus, President Adams was under no obligation to surrender Robbins. The president disagreed

NO ACT OF CONGRESS CAN EXTEND THE ORIGINAL JURISDICTION OF THE SUPREME COURT BEYOND THE BOUNDS LIMITED BY THE CONSTITUTION.
—CHARLES LEE

with his advisers and delivered Robbins to the British authorities. Adams's decision was extremely unpopular with the public, and his actions may have contributed to the defeat of his party in the subsequent presidential election.

In 1803 Lee represented William Marbury against President Thomas Jefferson's secretary of state, JAMES MADISON (MARBURY V. MADISON, 5 U.S. (1 Cranch) 137, 2 L. Ed. 60 [1803]). Marbury was appointed by Adams, Jefferson's predecessor, as a JUSTICE OF THE PEACE, but owing to the rush and confusion surrounding the eleventh-hour appointment, Marbury's commission had not been delivered. When Jefferson ordered Madison to withhold delivery of the commission, Marbury filed suit. Lee lost the case when the Supreme Court ruled that the act of Congress under which Marbury had been issued his commission was unconstitutional. Significantly, *Marbury* established the federal judiciary as the supreme authority in determining the constitutionality of law.

Four years later, Lee was more successful in his defense of statesman and former vice president AARON BURR, who was tried and acquitted on charges of treason (a violation of the allegiance one owes to one's sovereign or to the state) (*United States v. Burr,* 25 F. Cas. 2 [1807]). In 1806 Burr had traveled west to promote settlement of land in the Louisiana Territory. His intentions were suspect, and he soon found himself accused of treason for planning to initiate a separation of the western territories from the United States. Lee had been a longtime Burr supporter, and he took the case, winning an acquittal.

Lee died June 24, 1815, in Fauquier County near Warrenton, Virginia.

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Electoral College; Judicial Review.

LEE V. WEISMAN

Lee v. Weisman, 505 U.S. 577 (1992), represented a major political blow for proponents of prayer in the public schools. The decision came as something of a surprise to many legal and political analysts, but was in keeping with precedents established by the Court in similar cases. In *Engel v. Vitale* (1962), the Court barred prayer in the public schools as an unhealthy union of church and state. This position was affirmed and expanded in Abington School District v. Schempp (1963), in which the Court ruled that school-sponsored devotional activities and Bible readings were unconstitutional under the Establishment Clause. The Court has continued to adhere to a rigorous interpretation of the Establishment Clause in cases including *Board of Education of Kiryas Joel v. Grumet* (1994), where the Court found that the creation of a special school district to accommodate the needs of a community comprising entirely of Hasidic Jews was unconstitutional under the Establishment Clause. Significantly, the Court also refused a direct request from the administration of President GEORGE H.W. BUSH to review the test for violation of the Establishment Clause developed in *Lemon v. Kurtzman* (1971).

Amid what many people saw as increasing social disorder and lawlessness in the 1980s, a strong political movement emerged favoring a more prominent role for RELIGION within the public schools of the United States. This movement particularly emphasized the supposed benefits of prayer in the public schools, believing that a renewed emphasis on religious teachings in a school setting would lessen the perceived waywardness of youth. By the same token, many people feared that the introduction of religion into the public schools would constitute a dangerous abridgement of the Establishment Clause of the U.S. CONSTITUTION, which many interpret as calling for the complete separation of church and state. Throughout the decade of the 1980s, conservative presidents RONALD REAGAN and George H. W. Bush appointed new members to the Supreme Court, including SANDRA DAY O'CONNOR, ANTONIN SCALIA, DAVID H. SOUTER, and CLARENCE THOMAS, who many hoped would vote to reverse earlier Court rulings barring the introduction of religious teachings or practices into the public schools. A challenge to legal precedent was eagerly awaited by proponents of school prayer.

For many years it was customary for the principals of middle and high schools in Providence, Rhode Island, to invite religious leaders to give nonsectarian prayers as invocations and benedictions at school-sponsored graduation ceremonies. The school system had, in fact, prepared guidelines for clergy delivering such prayers, to insure that the prayers would not include any direct references to specific deities or saints. Despite this effort of the schools to make the prayers innocuous and all-inclusive, a middle school student, Deborah Weisman, and her father, Daniel, objected to the use of any prayer at her June 29, 1989, graduation ceremony. Four days prior to the ceremony, the Weismans sought a temporary restraining order from the U.S. district court for the District of Rhode Island to prohibit the use of prayer at Deborah's graduation. This motion was denied due to a lack of time to fully consider the case, and the graduation ceremony was conducted as planned. Daniel Weisman then filed for a permanent injunction against the use of prayers at future graduation ceremonies from the district court.

The district court held that the use of prayer at public school graduation ceremonies did constitute a violation of the Establishment Clause. To reach its VERDICT, the district court applied the three-pronged test for establishing infringement of the Establishment Clause devised in *Lemon v. Kurtzman.* The so-called Lemon Test directed that any state-sponsored program, in order to adhere to the Establishment Clause, must: reflect a clearly secular purpose; have a primary effect that neither advances nor inhibits religion; and avoid excessive government entanglement with religion.

The district court did not comment on the first or third stipulations of the Lemon Test, but noted that the use of prayer at official public school functions violated the second clause, in that by having prayer of any kind at a state function, the idea of religion in general was advanced. Robert E. Lee, principal of the Nathan Bishop Middle School of Providence, Rhode Island, and representing the petitioners, appealed the case to the U.S. Court of Appeals for the First Circuit. The court of appeals upheld the RULING of the district court, and expanded its scope by stating that the practice of using prayer at official school functions in fact violated all three prongs of the Lemon Test. The petitioners then appealed the case to the Supreme Court, which heard arguments on November 6, 1991.

In its argument before the Supreme Court, the petitioners maintained that prayer represents an appropriate and effective means to enable students and parents to seek spiritual guidance at important events such as school graduations. The Court was unmoved by either this logic or the prevailing conservative political climate, however, and upheld the ruling of the appeals court by a 5–4 vote. Justice ANTHONY M. KENNEDY, writing for the majority, made a distinction between this case and *Marsh v. Chambers,* when the Court had ruled that the use of a prayer to open a state legislature's session did not constitute a violation of the Establishment Clause. Kennedy maintained that the opening of a legislature, comprising entirely adults who are there of their own free will cannot be realistically compared to a school graduation, where numerous peer, parental, and social pressures for attendants exist. The Court also noted that school children are particularly susceptible to coercion through the schools, and as such the behavior of schools with regard to the Establishment Clause must be able to withstand especially careful scrutiny.

Justices Blackmun, O'Connor, and JOHN PAUL STEVENS concurred, adding that the Lemon Test was applicable and represented a straightforward means of assessing compliance with the Establishment Clause. Justices O'Connor, Souter, and John Paul Stevens. also wrote separately to maintain that the Establishment Clause should not only be construed as prohibiting the government from favoring one religion over another, but also as barring government support for religion as opposed to nonreligion. Justices WILLIAM H. REHNQUIST, Clarence Thomas, and BYRON R. WHITE, in dissenting from the majority, noted the pervasive tradition of using prayers as invocations and benedictions at a number of nonreligious events, viewing such prayers as being essentially nonreligious in intent when used in this manner.

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CROSS REFERENCE

Religion.

LEGACY

A disposition of personal property by will.

In a narrow technical sense, a legacy is distinguishable from a devise, a gift by will of real property. This distinction, however, will not be permitted to defeat the intent of a testator—one who makes a will—and these terms can be applied interchangeably to either personal property or real property if the context of the will demonstrates that this was the intention of the testator.

A GENERAL LEGACY, a DEMONSTRATIVE LEGACY, and a specific legacy represent the three primary types of legacies.

LEGAL

Conforming to the law; required or permitted by law; not forbidden by law.

The term *legal* is often used by the courts in reference to an inference of the law formulated as a matter of construction, rather than established by actual proof, such as legal malice.

LEGAL ADVERTISING

Legal advertising is any advertising an attorney purchases or places in publications, outdoor installations, radio, television, or any other written or recorded media.

The pros and cons of legal advertising continue in the early 2000s to be widely discussed as the amount and variety of advertising continues to increase each year. On the positive side, legal advertising makes the public aware of current legal issues and lets people know that there are lawyers willing to assist them. Legal advertising also serves the practical purpose of informing people about the times when it may be necessary to consult a lawyer. On the negative side, legal advertising can be manipulated into something that is more slick than informative. Guidelines and legislation have targeted that type of advertising.

The roots of legal advertising can be traced to England's legal system. However, current standards are based on Canon 27 of the AMERICAN BAR ASSOCIATION (ABA) Canons of Professional Ethics. Originally written in 1908, these guidelines were established to act as model rules for both state and local bar associations. Canon 27, which addressed legal advertising, stated, "[S]olicitation of business by circulars or advertisements, or by personal communications, or interviews, not warranted by personal relations are unprofessional." In 1937 this rule was modified to allow attorneys to publish listings in legal directories and other publications that were solely for those in the legal community. The next year the ABA ruled that distinctive listings could also be placed in the white pages of public telephone directories. However, this RULING was overturned in 1951.

In 1969 the ABA reclassified the canons and created the Model Code of PROFESSIONAL RESPONSIBILITY. In 1983, in an effort to further codify standards of legal conduct, the ABA replaced the code with the Model Rules of Professional Conduct; Section 7 of the Model Rules deals specifically with lawyer advertising and solicitation. According to Section 7, advertisements must be truthful and not deceptive or misleading. The ABA has defined misleading advertisements as those that create unrealistic expectations of the lawyer's ability; compare the lawyer's service to the services of other lawyers, unless the facts can be substantiated; or contain any known MISREPRESENTATION. Acceptable content includes the lawyer contact information, including address and phone number, type of services offered, bases of fees, available credit arrangements, foreign language ability, references, and client names (with their prior consent). Acceptable media include newspapers, television, radio, phone and legal directories, outdoor installations, and other written or recorded media. Lawyers are required to keep records listing the use and content of each advertisement, as a tool of enforcement.

The ABA periodically amends the model rules to make adjustments for evolving norms and changes in technology. For example, in 1998 the ABA addressed the widespread use of the INTERNET by lawyers to advertise their businesses. According to the ABA Commission on Advertising, "The use of the Internet by legal service providers creates a wide range of ethical issues."

A set of specific guidelines set forth by the ABA limits the ability of lawyers to state or

Should Legal Advertising Be Restricted?

Despite a series of rulings by the U.S. Supreme Court that lawyers may advertise their services, the issue of legal advertising remains controversial. Proponents of advertising contend that it provides to consumers information about their legal rights and allows those in need of legal services a way to find an attorney. Opponents charge that advertising demeans the legal profession because promoting legal services through print or electronic media tells the public that lawyers are only out to make money. With the rise of the INTERNET, legal advertising has moved into a new medium, generating even more questions about the need for restrictions on advertisements.

Opponents of legal advertising are primarily concerned with maintaining the law as a profession. As members of a profession, lawyers have pledged to serve the public interest. For much of U.S. history, lawyers have served as protectors of CIVIL RIGHTS and democratic institutions. Those who oppose legal advertising argue that this historic role must be preserved in the face of advertising that is sometimes undignified and demeaning to the profession.

State bar associations and state supreme courts have set standards for the ethical conduct of attorneys. Opponents of advertising believe that the regulation of advertising properly falls within the jurisdiction of these institutions. Though many attorneys may object that regulation restricts their FIRST AMENDMENT right to freedom of expression, the U.S. Supreme Court has never ruled that states are without power to police the legal profession.

Opponents argue that even with the restrictions currently imposed, too many lawyers hurt the profession by producing radio and television advertisements that create the perception that lawyers are ambulance chasers. If restrictions were loosened, this group contends, some lawyers would become even more aggressive in soliciting business. Public dissatisfaction with lawyers and the legal system, which has grown considerably since the 1970s, would continue to increase.

Opponents of advertising believe that purposeful competition between lawyers for clients is a great evil of the profession. The legal profession must concentrate on public service rather than profits. When lawyers advertise, they provide the public with a misleading picture of legal services, suggesting that legal issues can be solved as easily as a sink can be fixed. Because the law is complex, the consumer cannot evaluate the quality of the offered services.

Opponents also note that the high cost of advertising must be passed on to the consumer. The financial burden of advertising may encourage a lawyer to pursue nonmeritorious litigation. In addition, if a lawyer works with a high volume of clients generated by advertising, the lawyer may have little opportunity to communicate with a client or fully analyze a legal issue brought to the lawyer.

Those who support fewer restrictions on legal advertising contend that bar associations and bar leaders are out of step with the realities of U.S. society. First, they argue that bar associations were organized in the late nineteenth century to ensure that lawyers were self-regulated. This meant that a BAR ASSOCIATION could control the behavior of its members and find ways to preserve the monopoly over legal services. These supporters suggest that the public has not been well served by this system.

Though law is a profession, the need to make money has always been acknowledged. Supporters of advertising argue that it is, therefore, disingenuous for well-heeled lawyers to lament the introduction of competition. They point out that bar leaders have generally come from large corporate law firms, which have no need to advertise for clients but compete for profitable corporate retainers. These firms, they contend, have not provided public service but have concentrated on making profits. If corporate firms had helped with the unmet legal needs of society, perhaps advertising would not be necessary.

Proponents of advertising do not believe that professionalism, public service, and commercialism are mutually exclusive. They contend that lawyers can provide the public with a service by advertising. Much of legal advertising is educational, instructing consumers on what their legal rights are and where they may consult an attorney for free or for a minimal charge. Advertising reaches people who would not otherwise know what to do or where to go with a legal problem.

Proponents of advertising argue that placing the legal profession in the marketplace is not demeaning but democratic. Legal advertising breaks down the elitist notion that lawyers are somehow superior to others in the workforce. Lawyers provide services, many of which are simple. Competition helps to drive down the costs of legal services rather than increase them. Advertising does cost money, but innovative law firms have learned how to use forms, computers, and the services of legal assistants to reduce operating costs. In most cases, the quality of legal services has not suffered. As with any business, if consumers are unhappy with the service they receive, they will not return. Proponents contend that the brisk business done by law firms that advertise is evidence of the quality of work they produce.

Those who favor legal advertising generally are convinced that advertisements provide consumers with information about legal services. As long as promotional material is not misleading or false, legal advertising should be subject to minimal restrictions. Proponents note, however, that most lawyers either refrain from advertising or do it in the most conservative way, so as to avoid censure by their bar associations. As of 2009, there appeared to be no driving force at work within the legal profession that would change the status quo.

"Spamming" the Net

Legal advertising has found its way into the phone books and onto radio and television. With the growth of the Internet as an information and communication resource, lawyers and law firms have established home pages on the World Wide Web to provide legal information and advertise their services. Their doing so has created new opportunities and new problems.

In April 1994 Laurence Canter and Martha A. Siegel, of the Phoenix, Arizona, law firm of Canter and Siegel, sent an email message to thousands of Internet news groups, advertising their immigration law practice, in the hope of gaining new clients. The subject line, however, announced information on a lottery. News groups are electronic bulletin boards where people post messages concerning a very specific topic. They have millions of subscribers.

Canter and Siegel's direct mailing to the news groups cost them virtually nothing compared with the cost of a conventional hardcopy mailing. In sending their advertisement, they used a process called spamming, which allows a message to be sent to every news group in existence, regardless of whether a particular group might be interested in the content of the message.

The spamming set off a tidal wave of protests from readers of news groups who were angry that the law firm had violated Internet etiquette. As many as 6 million people received the message. Most people simply deleted the message but about 20,000 sent angry responses. Canter and Siegel's Internet provider terminated their account after these messages crashed its server 15 times. The law firm switched to another provider, which also terminated service. The couple published a book in 1995 on how to market on the Internet using "guerilla" techniques. They divorced in 1996.

Though the Internet community and members of the legal community voiced their displeasure at the spamming, the Canter and Siegel advertisement was legal at the time. The federal CAN-SPAM Act of 2003 made such email advertisements illegal, as it bans deceptive subject lines.

CROSS REFERENCES

E-mail; Internet.

B

imply that they have special knowledge in a particular field of law, such as patent law or admiralty law. Because potential clients do not typically have a way to verify that a lawyer is a qualified specialist, this guideline protects them from deception. However, in *In re R. M. J.* (455 U.S. 191, 102 S. Ct. 929, 71 L. Ed. 2d 64 [1982]), the Supreme Court ruled that lawyers have the right to advertise their area of practice if they use "unsanctioned, non-misleading language." Simply stating that they practice a specific type of law—for example, DIVORCE law—is acceptable; stating that they are specialists in that type of law is not.

Although these guidelines have been helpful in establishing higher standards in legal advertising, several problems have arisen. The major problem is that the guidelines are the creation of the ABA; therefore, the legal profession is responsible for enforcing them. As with any type of self-regulation, this has led some critics to claim that enforcement standards are sometimes lax and that inadequate punishment only encourages other lawyers to engage in inappropriate or unethical behavior.

The second main problem is that because state associations can create their own legislation based on the ABA guidelines, what is acceptable legal advertising in one state may be unacceptable in a neighboring state. This discrepancy can lead to confusion and violation of ethics codes, as well as image problems for the legal profession.

Several landmark cases set the standards for legal advertisements in the early 2000s. In *Bates v. State Bar of Arizona* (433 U.S. 350, 97 S. Ct. 2691, 53 L. Ed. 2d 810 [1977]), the Supreme Court ruled that legal advertising in newspapers is protected by the FIRST AMENDMENT and that state professional or disciplinary codes cannot

prohibit it. However, reasonable restrictions can be placed on deceptive, false, or misleading advertisements.

The Supreme Court addressed the issue of in-person legal solicitation in *Ohralik v. Ohio Bar Ass'n* (436 U.S. 447, 98 S. Ct. 1912, 56 L. Ed. 2d 444 [1978]). An Ohio BAR ASSOCIATION regulation stated, "A lawyer shall not recommend employment, as a private practitioner, of himself, his partner or associate to a non-lawyer who has not sought his advice regarding employment of a lawyer" (Ohio Code of Professional Responsibility, DR 2-103[A] [1979]). The Supreme Court ruled that in-person solicitation has very limited First Amendment protection and, therefore, left its regulation up to the individual states.

The issue of direct-mail solicitation was the focus of *Shapero v. Kentucky Bar Ass'n* (486 U.S. 466, 108 S. Ct. 1916, 100 L. Ed. 2d 475 [1988]). The Kentucky Bar Association had a statute that prohibited attorneys from using direct-mail solicitation to attract clients. The Supreme Court held that the law violated the First Amendment. The ensuing direct-mail standard was that truthful and nondeceptive ads could be targeted at people with known legal problems.

Some states during the early 2000s have approved amendments to rules that apply to legal advertising. New York, for instance, approved rules in 2007 that allow a lawyer to refer to publications and professional ratings in the lawyer's advertising. However, the rules limit the lawyer from including certain testimonials and endorsements as well as advertisements that feature legal documents. The New York rule changes, as well as those in other states such as Florida, have been the subject of controversy. In fact, in *Alexander v. Cahill* (No. 5:07-CV-117, 2007 WL 2120024 [N.D.N.Y. July 23, 2007], a New York federal district court struck down several provisions of the New York rules, holding that the rules violated the First Amendment.

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CROSS REFERENCES

Ethics, Legal; Freedom of Speech; Legal Specialization; Professional Responsibility.

LEGAL AGE

The time of life at which a person acquires full capacity to make his or her own contracts and deeds and to transact business or to enter into some particular contract or relation, such as marriage.

In most states a minor attains legal age at 18, although for certain acts, such as consuming alcoholic beverages, the age might be higher; for others, such as driving, the age might be lower. Legal age is synonymous with AGE OF CONSENT or AGE OF MAJORITY.

LEGAL AID

A system of nonprofit organizations that provide legal services to people who cannot afford an attorney.

In the United States, more than 1,600 legal aid agencies provide legal representation without cost or for a nominal fee to people who are unable to pay the usual amount for a lawyer's services. These agencies are sponsored by charitable organizations, lawyers' associations, and law schools, and by federal, state, and local governments. In some states legal aid services are partially funded from the interest earned in law firm trust accounts.

The first U.S. legal aid agency was founded in 1876 in New York City by the German Society. The agency assisted German immigrants with legal problems. Beginning in the late nineteenth century, lawyers' associations took

the lead in providing low-cost legal services. In 1911 the National Alliance of Legal Aid Societies was established to promote the concept of legal aid to people who were poor. The alliance, now known as the National Legal Aid and Defender Association, publishes information and holds conferences dealing with legal aid issues.

Legal aid agencies handle civil cases, including those concerning adoption, BANKRUPTCY, DIVORCE, employment issues, and LANDLORD AND TENANT disputes. These agencies may not use federal funds to handle criminal cases. The criminal counterpart to the U.S. legal aid system is called the public defender system. Public defenders are funded through state and local agencies and federal grants.

Legal aid agencies are run by attorneys and administrative support staff. They are often supplemented by law students, who participate in legal aid clinics that give students opportunities to work with indigent clients. In addition, many private attorneys volunteer their time to assist these agencies. In some jurisdictions the court may appoint private attorneys to handle legal aid clients. Despite these pro bono (donated) services, legal aid agencies typically have more clients than they can serve. When they do, they may exclude complicated matters, such as divorce, from the legal services they provide.

The scope of legal aid widened dramatically in 1964, when President LYNDON B. JOHNSON established the Office of Legal Services. This agency organized new legal aid programs in many states, then suffered budget cuts in the early 1970s. In 1974 Congress disbanded the office and transferred its functions to the newly created LEGAL SERVICES CORPORATION (Legal Services Corporation Act of 1974, 88 Stat. 378 [42 U.S.C.A. § 2996]). The corporation is a private, nonprofit organization that provides financial support to legal aid agencies through the distribution of grants. It also supports legal aid attorneys and staff through training, research, and technical assistance.

CROSS REFERENCES

Pro Bono; Right to Counsel.

LEGAL ASSISTANT

A legal assistant is a person, working under the supervision of a lawyer, qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer. A legal assistant is also known as a paralegal.

Legal assistants, or paralegals, help attorneys deliver legal services. Although they assist attorneys in very technical areas of the law, they are prohibited from practicing law without a license. Legal assistants cannot represent a client or give legal advice. All work performed by legal assistants must be done under the supervision of an attorney, who is subject to disciplinary procedures for ethical violations committed by the legal assistant.

The legal assistant profession emerged in the 1960s, as law firms hired persons, usually women, to help lawyers prepare complex or highly detailed cases. These persons typically worked in specialties such as BANKRUPTCY, probate and estate planning, real estate, and civil litigation, where they organized documents, completed forms, and prepared cases for trial.

In 1968 the AMERICAN BAR ASSOCIATION (ABA) created the Special Committee on Lay Assistants for Lawyers. The committee worked to develop the training of nonlawyer assistants, and the utilization of their services to enable lawyers to perform their professional duties more effectively and efficiently. In 1973 the ABA approved the Guidelines for the Approval of Legal Assistant Education Programs, and in 1975 it approved the first eight legal assistant training programs under those guidelines. In 1996 there were 206 ABA-approved education programs in the United States.

A drive for professional standing led to the establishment of two legal assistant organizations. The National Federation of Paralegal Associations (NFPA) was founded in 1974. The NFPA is a federation of sixty member associations that works to improve the educational and professional standing of legal assistants. In 1975 the National Association of Legal Assistants (NALA) was formed.

Both the NFPA and the NALA have worked to increase the educational requirements for becoming a legal assistant. In the 1960s legal assistants learned on the job. In the 1970s a variety of educational options became available: certificate programs, two-year associate of arts degrees in paralegal studies, and four-year

Bachelor of Arts degrees in paralegal studies. In the 1990s, postbaccalaureate programs started to appear.

The demand for legal assistants has continued to grow since the 1960s. By 2006 there were 238,000 legal assistants, with a projected growth rate of 22 percent by 2016. Most legal assistants are women. A Bureau of Labor Statistics study found that in 2005 almost 14 percent of legal assistants were men, yet the percentage had increased by 2 percent since 2004. Besides working for law firms, legal assistants are employed by corporations, banks, government agencies, and insurance companies. The demand for legal assistants is highest in large cities.

The profession has continued to explore ways to improve its status. For example, the NALA offers a certified legal assistant credential. This credential is based on a two-day examination that includes legal research, legal terminology, ethics, communications, and four areas of substantive law chosen by the candidate. It must be renewed every five years by attending continuing education programs. The NALA also offers specialty examinations to those with advanced knowledge in substantive areas of the law.

The regulation of legal assistants has been addressed by numerous state legislatures, state BAR ASSOCIATION committees, and state supreme court task forces. None of these entities has implemented regulation, whether it be registration, licensure, or certification.

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LEGAL CAP

Long stationery with a wide left-hand margin and a narrow right-hand margin, used by attorneys.

The trend of the courts is to move away from permitting a document of this size to be filed. Courts presently recommend or require the use of standard size paper.

LEGAL CAUSE

In the law of torts, conduct that is a substantial factor in bringing about harm, which is synonymous with proximate cause.

LEGAL CERTAINTY

A test in civil procedure designed to establish that a complaint has met the minimum amount in controversy required for a court to have jurisdiction to hear the case. Under this test, if it is apparent from the face of the pleadings, to a "legal certainty" that the plaintiff cannot recover or was never entitled to the amount in the complaint, then the case will be dismissed.

For example, the existence of federal diversity jurisdiction on the part of a federal district court–one aspect of which is the presence of an AMOUNT IN CONTROVERSY in excess of $75,000–is a threshold question of law, or one which must be determined by the judge at the start of the action by applying the legal-certainty test.

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CROSS REFERENCES

Amount in Controversy; Dismissal; Jurisdiction.

LEGAL DECISION

See COURT OPINION.

LEGAL DETRIMENT

A change in position by one to whom a promise has been made, or an assumption of duties or liabilities not previously imposed on the person, due to the person's reliance on the actions of the one who makes the promise.

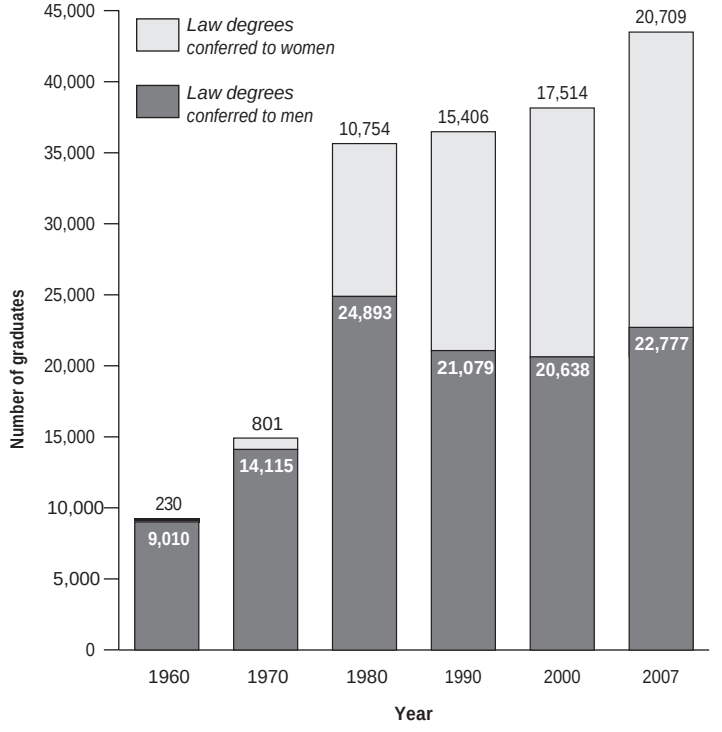
CROSS REFERENCES

Consideration; Contracts.

LEGAL EDUCATION

There were no law schools in colonial America. Those who sought a legal career had several options. They could embark on a self-directed course of study; they could serve as an assistant in a clerk of court's office; or they could travel to England to study at the INNS OF COURT. The most common method of obtaining a legal education, however, was through the apprenticeship system.

Law Degrees Conferred, 1960 to 2007



SOURCE: U.S. National Center for Education Statistics, *Digest of Education Statistics*, 2008.

The apprenticeship system that allowed men (it was generally unavailable to women) to acquire education and experience by working under an experienced practitioner. Ideally, an apprentice would spend several years learning both the law and the practical aspects of a law practice. The quality of apprenticeships varied greatly, however, depending on the administering attorney's skill and attention. Some apprenticeships were merely a source of cheap labor. THOMAS JEFFERSON once commented that the services he was expected to render as an apprentice were worth more than the instruction he received.

In 1779 Jefferson helped found the first chair of law, at William and Mary College, and appointed his mentor, GEORGE WYTHE, to fill it. Yale, Columbia, the University of Maryland, and Harvard followed suit. The positions they established were part of the general university curriculum and were typically filled by practitioners rather than academicians. This early movement to emphasize the scholarship of law gained little momentum because most lawyers believed that apprenticeships provided sufficient legal training. In 1784, however, proprietary (for-profit) law schools began to spring up, which spurred the transformation of legal education.

Proprietary law schools were essentially specialized and elaborate law offices. The first and most famous was Connecticut's LITCHFIELD LAW SCHOOL. Its 14-month course provided instruction in subjects such as property, contracts, procedure, master-and-servant, and commercial law—similar to the subjects of some modern first-year law school classes. Litchfield graduated about 1,000 students in its 49-year history, including 2 future vice presidents, 101 congressmen, 28 senators, 14 governors, and scores of distinguished state jurists.

The advent of law professorships, proprietary schools, and bar associations brought some standard of form to legal education. These standards deteriorated, however, thanks in part to ANDREW JACKSON, who was elected the seventh PRESIDENT OF THE UNITED STATES in 1828. Jackson, a lawyer, considered himself to be a champion of the common person. State legislatures quickly followed his lead, eschewing anything elitist and reasserting authority formerly delegated to bar associations. Bar admission standards declined. Nearly anyone who could show "good moral character" was permitted to practice law, regardless of any knowledge of the field. Bar examinations, if required at all, were usually perfunctory.

Standards dropped even at Harvard Law School, which was founded in 1817 as the first academic law school. By the end of the 1820s, students who were denied admission to Harvard College could go directly into the law school; the school also quit giving exams. In 1829, however, Justice JOSEPH STORY of the U.S. Supreme Court became a Harvard Law professor and augured Harvard's emergence as the first modern law school. In 1870 CHRISTOPHER COLUMBUS LANGDELL became dean of Harvard Law School, essentially launching the modern era of legal education.

Langdell believed that law could be taught as a science. Rather than listening passively to lectures and reading treatises, Langdell's students dissected reported case decisions. Using a technique known as Socratic dialogue, professors bombarded their students with questions,

forcing them to analyze the facts, reasoning, and law in each case. In addition, Langdell grouped related cases together, devoting separate books to different topics. Langdell's method of instruction through dialogue and case-study is standard in law schools in the early 2000s.

Langdell also instituted tighter admission standards, expanded the program from two to three years, and raised graduation requirements. Other university law schools soon began to adopt some of Harvard's lofty standards.

The AMERICAN BAR ASSOCIATION (ABA), founded in 1878, along with the Association of American Law Schools (AALS), formed in 1900, worked to consign apprenticeships to the pages of history. In 1917, 36 out of 49 jurisdictions still required a period of apprenticeship, but future lawyers could substitute law school. In the last half of the nineteenth century, a high school graduate could enter most law schools, but the ABA and the AALS worked to steadily increase admission standards. By 1931, 17 states required two years of college before admission, and 33 had a three-year law curriculum. Just eight years later 41 states required at least two years of college. In the early 2000s law schools require prospective students to have a four-year degree from an accredited college or university. As of 2009 there were 200 ABA-approved law schools. A few states, including California, allow graduates of schools not approved by the ABA (usually *for profit* schools) to sit for the BAR EXAMINATION.

Criticism of the Langdell model of legal education has grown since the 1980s, but few law schools have sought to break from it. However, in 2006 Harvard Law School changed its first-year curriculum, which consisted of contracts, torts, CIVIL PROCEDURE, criminal law, and property. The school introduced courses on legislation and regulation, international and comparative law, and problem solving. As of 2009 it remained to be seen whether other law schools would modify their first-year classes.

Professional legal development continues throughout a lawyer's career. In 1975 Minnesota was the first state to mandate CONTINUING LEGAL EDUCATION for practitioners, requiring 45 hours of approved legal study every three years. Since then, the majority of states have established rules that require some form of mandatory continuing education, although requirements vary by state. Continuing education is also required for attorneys who wish to be board certified as specialists in a certain area of law. Certified legal specialist programs are offered in many states and are accredited by the ABA.

The law profession, like many others, was slow to open up to women. The first woman lawyer in the United States was Arabella Mansfield (1846–1911), who became a member of the Illinois bar in 1869. Mansfield studied in her brother's law office and was admitted to the bar despite the fact that Illinois legislation required any person applying for bar admission to be white, male, and over 21 years of age. Ada Kepley (1847–1925) was the first woman in the United States to earn a law degree. She graduated from Union College of Law (now Northwestern University Law School) in 1870. By 1930 most U.S. law schools were admitting women, but not Harvard Law School. The school remained closed to women until 1950. Although women were finally accepted into law schools, the number of women who attended was scant. Until the mid-1960s less than 3 percent of law students were women. Those numbers surged during the 1970s. 1n 2009 women made up almost 50 percent of U.S. law school admissions.

Desegregation of law schools came no more quickly than it did to other educational institutions, despite the pivotal role lawyers played in the desegregation process. Since the 1960s minority enrollment in law schools has increased, but the numbers still remain low. In 1960 about 1 percent of law school students were African American. By the late 1990s that number had grown to only 8 percent. In response, a number of schools began active recruitment programs to help ensure greater diversity in their student body. However, by 2009 admission statistics showed only minimal improvement in recruiting African Americans students.

When schools use race as a factor in the admissions process, however, critics charge that they are violating constitutional rights. Such charges have led to a number of controversial cases, including *GRUTTER V. BOLLINGER* (539 U.S. 306,123 S. Ct. 2325, 156 L. Ed. 2d 304 [2003]), in which a prospective white student contended that she was denied admission to the University of Michigan Law School because the school uses race as a deciding factor in admissions. In a 5–4 opinion, the Supreme Court ruled that the

school's admission policy did not violate the EQUAL PROTECTION Clause of the FOURTEENTH AMENDMENT because there was a "compelling interest in obtaining the educational benefits that flow from a diverse student body."

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Affirmative Action; Case Method; Law School Admission Test; Legal Specialization

LEGAL FICTION

An assumption that something occurred or someone or something exists which, in fact, is not the case, but that is made in the law to enable a court to equitably resolve a matter before it.

In order to do justice, the law will permit or create a LEGAL FICTION. For example, if a person undertakes a renunciation of a legacy which is a gift by will the person will be deemed to have predeceased the testator—one who makes a will—for the purpose of distributing the estate.

LEGAL HISTORY

The record of past events that deal with the law.

Legal History is a discipline that examines events of the past that pertain to all facets of the law. It includes analysis of particular laws, legal institutions, individuals who operate in the legal system, and the effect of law on society. U.S. legal history is a relatively new subtopic that began to grow dramatically in the 1960s.

Before the 1960s legal history was confined mostly to biographies of famous lawyers and judges and to technical analysis of particular areas of SUBSTANTIVE LAW. In general it was an afterthought. Political historians made reference to important U.S. Supreme Court cases, but there was little in-depth analysis of topics such as CRIMINAL LAW, the law of SLAVERY, or the development of the state and federal court systems.

The study of U.S. legal history began with the work of James Willard Hurst. In 1950 Hurst published *The Growth of American Law: The Law Makers,* which examined many types of historical sources in order to fashion a history of U.S. law. Hurst went beyond the work of judges and courts to find material about the law in constitutional conventions, legislatures, administrative agencies, and the bar. Among his many other works, Hurst explored the relationship of law and the economy in *Law and Economic Growth: The Legal History of the Lumber Industry in Wisconsin, 1836–1915* (1964).

In his scholarship Hurst tried to integrate PUBLIC LAW (law created by government bodies) with PRIVATE LAW (law implemented through public courts to resolve individual disputes). Legal historians who began researching and writing in the 1960s typically emphasized one of these types of law. Lawrence M. Friedman emphasized the work of private law in *A History of American Law,* first published in 1973. In this book Friedman examined, among many topics, the law of contract, real property, and tort.

Paul L. Murphy focused on public law, writing a series of articles and books relating the U.S. Constitution to the social and cultural pressures of different historical periods. In *World War I and the Origin of Civil Liberties in the United States* (1979), Murphy analyzed the relationship between the United States' experience in war and developing interest in FIRST AMENDMENT civil liberties.

The field of legal history also benefited from the growth of social history in the 1960s. The issues of gender, race, and class became crucial to historians during the VIETNAM WAR period. Legal historians such as Kermit L. Hall have built on these issues, interweaving legal history with social and cultural history to explain how

law is both a reactive mechanism, responding to public problems, and an active mechanism, shaping behavior through its rules and structure. Hall's *The Magic Mirror: Law in American History* (1989) was the first major work to synthesize 20 years of social and legal history research into an overview of U.S. law, public and private.

Legal historians have looked at the role of law in U.S. history in several disparate ways. Hurst and many other historians have seen the law as a means of enhancing political and economic consensus. Their view is that law acts as a neutral party through which conflicting interests work to achieve their own ends.

Other, more radical historians see law as a formal device for perpetuating the domination of the ruling economic class. Their viewpoint emphasizes that law is not the expression of neutral rules but a creature of power and politics. Therefore, those who lack power—including women, members of racial minorities, and people who are poor—have been hurt by the law.

The consensus and conflict models of legal historical analysis turn on their positions concerning the principle called the RULE OF LAW. This rule, on which all other legal rules are based, has been a basic principle of Western culture since the seventeenth century. It posits that all persons are equal before a neutral and impartial authority, regardless of economic standing, gender, race, family connections, or political connections. Legal historians produce scholarship that goes to the question of whether all persons receive justice.

The field of legal history continues to grow, with historians now exploring every facet of the law. History is no longer defined as just Supreme Court decisions or congressional legislation. Historians examine the inner workings of state courts, frontier law of the nineteenth century, the role of law in slavery, criminal law, legal bias against homosexuality, and more.

CROSS REFERENCES

Critical Legal Studies; Feminist Jurisprudence; Jurisprudence.

LEGAL LIST STATUTES

State laws that enumerate the investments into which certain institutions and fiduciaries—those who manage money and property for another and who must exercise a standard of care in such activity in accordance with law or contract—can venture.

Legal lists are frequently limited to high caliber securities that generate a satisfactory yield with a minimum amount of risk to the principal.

LEGAL MALPRACTICE

A lawyer is obligated to comply with a code of ethics that is adopted by the state in which the lawyer practices. These rules, typically known as the Model Rules of Ethics, or Ethical Rules, address a lawyer's conduct in various situations. A lawyer has a duty, in all dealings and relations with a client, to act with honesty, GOOD FAITH, fairness, integrity, and fidelity. He or she must possess the legal skill and knowledge that is ordinarily possessed by members of the profession. A lawyer should not take any action that is improper under these rules or that which even suggests the appearance of impropriety.

Even after the lawyer and the client terminate their relationship, a lawyer is not permitted to acquire an interest that is adverse to a client, in the event that this might constitute a breach of the ATTORNEY-CLIENT PRIVILEGE. A lawyer may not use information that he or she obtained from a client as a result of their relationship. For example, it would constitute unethical behavior for an attorney to first advise a client to sell a piece of property so that it would not be included in the client's PROPERTY SETTLEMENT upon divorce, and then to purchase the property from the client for half of its MARKET VALUE.

Any dealings that a lawyer has with a client will be carefully examined. Such dealings require fairness and honesty, and the lawyer must show that no UNDUE INFLUENCE was exercised and that the client received the same benefits and advantages as if he or she had been dealing with a stranger. If the client had independent legal advice about any transaction, that is usually sufficient to meet the lawyer's burden to prove fairness.

A lawyer also has the duty to provide a client with a full, detailed, and accurate account of all money and property handled for him or her. The client is entitled to receive anything that the lawyer has acquired in violation of his duties to the client.

If a lawyer fails to promptly pay all funds to his or her client, the lawyer may be required to pay interest. A lawyer is liable for fraud—except when the client caused the attorney to commit fraud—and is generally liable for any damages resulting to the client by his negligence. In addition, a lawyer is responsible for the acts of associates, clerks, legal assistants, and partners and may be liable for their acts if they result in losses to the client.

Negligent errors are most commonly associated with LEGAL MALPRACTICE. This category is based on the premise that an attorney has committed an error that would have been avoided by a competent attorney who exercises a reasonable standard of care. Lawyers who give improper advice, improperly prepare documents, fail to file documents, or make a faulty analysis in examining the title to real estate may be charged with malpractice by their clients. A legal malpractice action, however, is not likely to succeed if the lawyer committed an error because an issue of law was unsettled or debatable.

Many legal malpractice claims are filed because of lack of communication and negligence in the professional relationship. The improper and unprofessional handling of the attorney-client relationship leads to negligence claims that are not based on the actual services provided. Lawyers who fail to communicate with their clients about the difficulties and realities of the particular claim risk malpractice suits from dissatisfied clients who believe that their lawyer was responsible for losing the case.

Another area of legal malpractice involves fee disputes. When attorneys sue clients for their fees, many clients assert malpractice as a defense. As a defense, it can reduce or totally eliminate the lawyer's recovery of fees. The frequency of these claims is declining, in part perhaps because attorneys are reluctant to sue to recover their fees.

A final area of legal malpractice litigation concerns claims that do not involve a deficiency in the quality of the lawyer's legal services provided to the client, but an injury caused to a THIRD PARTY because of the lawyer's representation. This category includes tort claims filed against an attorney alleging MALICIOUS PROSECUTION, ABUSE OF PROCESS, defamation, infliction of emotional distress, and other theories based on the manner in which the attorney represented the client. These suits rarely are successful except for malicious prosecution. Third-party claims also arise from various statutes, such as securities regulations, and motions for sanctions, such as under Rule 11 of the Federal Rules of CIVIL PROCEDURE.

Short of filing an actual lawsuit, someone who is unsatisfied with an attorney's services may file a bar complaint with the state bar in the state where the attorney practices. The bar is then obligated to investigate the matter, and the attorney is obligated to cooperate in the investigation, or he or she will face further sanctions. A bar complaint is considered an extremely serious matter and must be answered even if the attorney believes the compliant is frivolous. The bar has the authority to discipline its attorneys with formal and informal procedures up to and including the authority for disbarment. The procedures for these actions are governed by state law.

CROSS REFERENCES

Attorney Misconduct; Ethics, Legal; Privileged Communication.

LEGAL POSITIVISM

A school of jurisprudence whose advocates believe that the only legitimate sources of law are those written rules, regulations, and principles that have been expressly enacted, adopted, or recognized by a governmental entity or political institution, including administrative, executive, legislative, and judicial bodies.

The key to LEGAL POSITIVISM is in understanding the way positivists answer the fundamental question of jurisprudence: "What is law?" The word "positivism" itself derives from the Latin root *positus*, which means to posit, postulate, or firmly affix the existence of something. Legal positivism attempts to define law by firmly affixing its meaning to written decisions made by governmental bodies that are endowed with the legal power to regulate particular areas of society and human conduct. If a principle, rule, regulation, decision, judgment, or other law is recognized by a duly authorized governmental body or official, then it will qualify as law, according to legal positivists. Conversely, if a behavioral norm is enunciated by anyone or anything other than a duly authorized governmental body or official, the norm will not qualify as law in the minds of legal positivists,

no matter how many people are in the habit of following the norm or how many people take action to legitimize it.

Legal positivism is often contrasted with NATURAL LAW. According to the natural law school of jurisprudence, all written laws must be informed by, or made to comport with, universal principles of morality, RELIGION, and justice, such that a law that is not fair and just may not rightly be called "law." For example, persons engaging in peaceful protest through CIVIL DISOBEDIENCE often appeal to a higher natural law in denouncing societal practices that they find objectionable. Legal positivists generally acknowledge the existence and influence of non-legal norms as sources to consult in evaluating human behavior, but they contend that these norms are only aspirational, for persons who contravene them suffer no immediate adverse consequences for doing so. By contrast, positivists emphasize that legal norms are binding and enforceable by the POLICE POWER of the government, such that individuals who violate the law may be made to face serious consequences including fine, imprisonment, loss of property, or even death.

Legal positivism serves two values. First, by requiring that all law be written, positivism ensures that members of society will be explicitly apprised of their rights and obligations by the government. In a legal system that is run in strict accordance with positivist tenants, litigants would never be unfairly surprised or burdened by the governmental imposition of an unwritten legal obligation that was previously unknown or non-existent. Second, legal positivism serves to curb judicial discretion. In some cases, judges are not satisfied with the outcome of a case that would be dictated by a narrow reading of existing laws, and they may be tempted to reach a result that is more fair and just. However, legal positivism requires judges to decide cases in accordance with the law, and not their personal predilections. In this way, positivists believe that the integrity of the law is maintained through a neutral and objective judiciary that is not guided by subjective notions of right and wrong.

Not surprisingly, the autonomous and detached nature of legal positivism has been criticized for its harshness. The mere enactment of a law by a political institution, some critics of positivism have argued, does not mean that society should accept all such laws as legitimate and binding. For example, the slave codes enforced by the Confederacy during the Civil War generally contained clearly written rules that systematically deprived African-Americans of their civil liberties, not to mention their human dignity. In Nazi Germany, Adolph Hitler's regime brutally stripped Jews of any governmental protection through a labyrinth of legal codes.

Despite the written nature of these laws, critics of legal positivism argue, such legal systems must not be treated with the same respect that is afforded to regimes that genuinely confer fundamental liberty equally upon all persons. Legal positivism, these critics point out, sometimes emasculates the social function of law by preventing it from serving human needs. Thus, these critics conclude that written law ceases to be legitimate when it is divorced from principles of fairness, justice, and morality. The American colonists based their revolt against the tyranny of British law precisely upon this point. In fact, the DECLARATION OF INDEPENDENCE, by declaring that "all men are created equal ... [and] endowed by their Creator with certain inalienable rights", embodies clear natural law principles.

Legal positivism has ancient roots. Christians believe that the Ten Commandments have sacred and pre-eminent value in part because they were inscribed in stone by God, and delivered to Moses on Mount Sinai. When the ancient Greeks intended for a new law to have permanent validity, they inscribed it on stone or wood and displayed it in a public place for all to see. In classical Rome, Emperor Justinian (483–565 a.d.) developed an elaborate system of law that was contained in a detailed and voluminous written CODE.

Prior to the American Revolution, English political thinkers JOHN AUSTIN and THOMAS HOBBES articulated the command theory of law, which stood for the proposition that the only legal authorities that courts should recognize are the commands of the sovereign, because only the sovereign is entrusted with the power to enforce its commands with military and police force.

The most famous advocate of legal positivism in American history is probably Justice OLIVER WENDELL HOLMES, JR. He wrote that the "prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law" (O.W. Holmes Jr., The Path of the

Law, 10 Harvard LAW REVIEW 457 (1897)). In making this statement, Holmes was suggesting that the meaning of any written law is determined by the individual judges interpreting them, and until a judge has weighed in on a legal issue, the law is ultimately little more than an exercise in trying to guess the way a judge will rule in a case.

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LEGAL PROCEEDINGS

All actions that are authorized or sanctioned by law and instituted in a court or a tribunal for the acquisition of rights or the enforcement of remedies.

LEGAL PUBLISHING

Legal publishing refers to the production of texts that report laws or discuss the practice of law.

Originally limited to printed materials, LEGAL PUBLISHING encompasses electronic media as well, with most legal publications eventually becoming available online.

The first collections of American laws were published during the seventeenth and eighteenth centuries. Printing presses allowed laws to be printed on a regular basis. Colonists relied on ENGLISH LAW as COMMON LAW, so local laws were not reported until after the American Revolution. Once the colonies gained independence and formed the United States, the number of lawyers grew, along with the need for a printed record of U.S. laws.

The original case reporters were published by individuals without the support of the government. In 1841 Georgia was the first state government to require its judges to write out their decisions. The clerk of the court would send the decisions to the governor, who had the decisions printed and distributed to all of the judges in the state.

During the late nineteenth century, John B. West started the National Reporter System. West's *Syllabi* contained the full text of decisions of the Supreme Court of Minnesota. The publication was enlarged to include decisions of Wisconsin and eventually became the *Northwestern Reporter.* West's company soon expanded to cover decisions across the country. The company took responsibility for making sure that the reports were accurate. It included headnotes for each case, summarizing the issues of law that were discussed in the decision. The decisions were published in parts that were later reprinted in hardbound volumes. Using these *advance sheets* allowed decisions to be reported more quickly.

Other publishers that began reporting decisions in the 1800s included Matthew Bender and Company, Bancroft-Whitney Company, and the Lawyers Cooperative Publishing Company. Lawyers Cooperative Publishing printed selected decisions. Each year, it also printed a volume that reported where original decisions were cited in current decisions.

Federal decisions began to be reported in a regular and complete form in the late 1800s. The first volume of *American LAW REPORTS* was printed in 1919 by the Edward Thompson and Lawyers Cooperative Publishing Companies.

With so many decisions being reported, it became difficult to determine the status of a case. Lawyers needed to know whether a case had been overruled or modified. Typically, they would mark any modifications to a decision in the margins of their reporters. In 1875, Frank S. Shepard published the *Illinois Annotations,* which was a series of sheets that could be cut out and pasted in the margins of the book that reported a case. The sticker format was dropped in 1900, and the citator took on its current tabular format. Originally covering only cases, Shepard's citator was expanded to include citations to the Constitution, statutes, and court rules.

The publication of statutes followed a history similar to that of cases. Individual states printed their own statutes beginning at the end of the eighteenth century. The first commercial effort to publish federal laws occurred in 1902. In 1924, Congress authorized the publication of the *U.S. CODE.* West Publishing Company and the Edward Thompson Company were hired to assist with the publication. Federal law was divided into individual titles. In the early 2000s, statutes are

first published as unedited, uncollated statutes called *slip laws.* At the end of each session, the statutes are gathered into the *U.S. Code.*

Little, Brown and Company was the first to publish books specifically for students. In 1871 Little, Brown started publishing casebooks for students. Casebooks present leading cases in a particular area of law, with accompanying discussion of the law. In 1880, 11 titles were available.

Other common legal publications include practice aids for lawyers, such as form books and practice books. Form books present standard formats for common legal documents. Practice books describe the laws of a particular jurisdiction or practice area and give guidelines on various aspects of the law.

Legal periodicals make up another segment of the legal publishing market. These include newspapers and newsletters that report on current law. Within law schools, student-edited law reviews present articles by students, law school faculty, and other faculty.

During the 1990s three companies acquired the vast majority of the major legal publishing companies in the United States. In 1997 alone, the costs of these MERGERS AND ACQUISITIONS amounted to about $1 trillion. Many of the companies that were acquired during this time had long histories in the area of legal publishing. The American Association of Law Libraries' Committee on Relations with Information Vendors (CRIV) maintains lists of the publishing companies that belong to each PARENT COMPANY (see www.aallnet.org/committee/criv/).

Thomson Corporation acquired the largest legal publisher, West Publishing Company, in 1996. It merged Thomson Publishing Company and West Publishing Company to form West Group. West Group continued to publish the National Reporter System, the *United States Code Annotated*, many annotated state statutes, and many other publications formerly published by West Publishing Company. Other companies acquired by, or merged with, Thomson included Lawyers Cooperative Publishing, Research Institute of America, Bancroft-Whitney, Clark Boardman Callaghan, Foundation Press, Rutter Group, Findlaw, Lawoffice.com, and Gale Group. (now part of Cengage Learning.)

Reed Elsevier, P.L.C. owned Lexis Law Publishing, which published the *United States Code Service* and several other legal titles. Reed Elsevier also acquired such companies as Matthew Bender & Co., Mealey Publications, Michie Company, Shepard's, and Martindale-Hubbell. The companies published a variety of annotated state statutes, other legal practice materials, and Shepard's Citations.

A third company, Wolters Kluwer, owned Aspen Publishers, Inc.; CCH Incorporated; Little, Brown, & Company; and Loislaw. The companies produced a number of sources for law students, including casebooks. CCH Incorporated published a number of specialized publications focusing, for example, on tax, securities, and copyright.

In the early 2000s the legal publishing market included electronic publishing. COMPUTER-ASSISTED LEGAL RESEARCH made it possible to search legal materials online. Thomson's WESTLAW and Reed Elsevier's LEXIS/NEXIS were the largest computer-assisted legal research services, which provide access to cases, statutes, rules, law reviews, public records, and a variety of practice guides. In 2000 a new database named HeinOnline emerged, providing subscribers with more than 40 million pages of online research material.

Although online services such as WESTLAW, LEXIS/NEXIS, and HeinOnline generally operate on a subscription-basis, a number of Web sites provide free access to a variety of legal materials that include federal and state CASE LAW, codes and regulations, treatises, law reviews, scholarly articles, mainstream news stories, as well as legal forms, public records, and attorney directories. Examples of such Internet sites are Findlaw (www.findlaw.com) and the Legal Information Institute, a site maintained by Cornell Law School (www.law.cornell.edu).

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Case Law; Century Digest®; Computer-Assisted Legal Research; Court Opinion; Decennial Digest®; Digest; Federal Reporter®; Federal Supplement®; Hornbook; Law Reports; LEXIS®; Shepardizing; Shepard's® Citations; Statutes at Large; Treatise; U.S. Code; U.S. Code Annotated®; Westlaw®

LEGAL REALISM

The school of legal philosophy that challenges the orthodox view of U.S. jurisprudence under which law is characterized as an autonomous system of rules and principles that courts can logically apply in an objective fashion to reach a determinate and apolitical judicial decision.

Legal realists maintain that common-law adjudication is an inherently subjective system that produces inconsistent and sometimes incoherent results that are largely based on the political, social, and moral predilections of state and federal judges.

The U.S. legal realism movement began in 1881 when OLIVER WENDELL HOLMES JR. published *The COMMON LAW*, an attack on the orthodox view of law. "The life of the law has not been logic," Holmes wrote, "it has been experience." Legal realism flourished during the 1920s and 1930s when ROSCOE POUND, a professor from Harvard Law School, and KARL LLEWELLYN, a professor from Yale Law School, published a series of articles debating the nuances of the movement. Although the movement declined after WORLD WAR II, it continues to influence how judges, lawyers, and laypersons think about the law.

Legal realism is not a unified collection of thought. Many realists, such as Pound and Llewellyn, were sharply critical of each other and presented irreconcilable theories. Yet five strands of thought predominate in the movement. The strands focus on power and economics in society, the persuasion and characteristics of individual judges, society's WELFARE, a practical approach to a durable result, and a synthesis of legal philosophies.

Power and Economics in Society

The first strand is marked by the nihilistic view that law represents the will of society's most powerful members. This view is articulated by Thrasymachus in Plato's *Republic*, when he tells Socrates that in every government "laws are made by the ruling party in its own interest," and "the ruling element is always the strongest." When courts speak in terms of what is right and just, Thrasymachus said, they are speaking "in the interest of those established in power." Justice Holmes echoed these sentiments when he wrote that the law must not be perverted to prevent the natural outcome of dominant public opinion (LOCHNER V. NEW YORK, 198 U.S. 45, 25 S. Ct. 539, 49 L. Ed. 937 [1905]).

Realists argued that law frequently equates the dominant power in society with pervasive economic interests. During the incipience of the U.S. legal realism movement in the nineteenth century, the United States was transformed from a static agrarian economy into a dynamic industrial market. Realists asserted that U.S. common law facilitated this transformation in a number of ways. Horwitz reported in *The Transformation of American Law* that when interpreting an insurance contract, one judge remarked in 1802 that courts must not adopt an interpretation that will "embarrass commerce." Instead, the judge said, courts are at liberty to "adopt such a construction as shall most subserve the solid interests of this growing country."

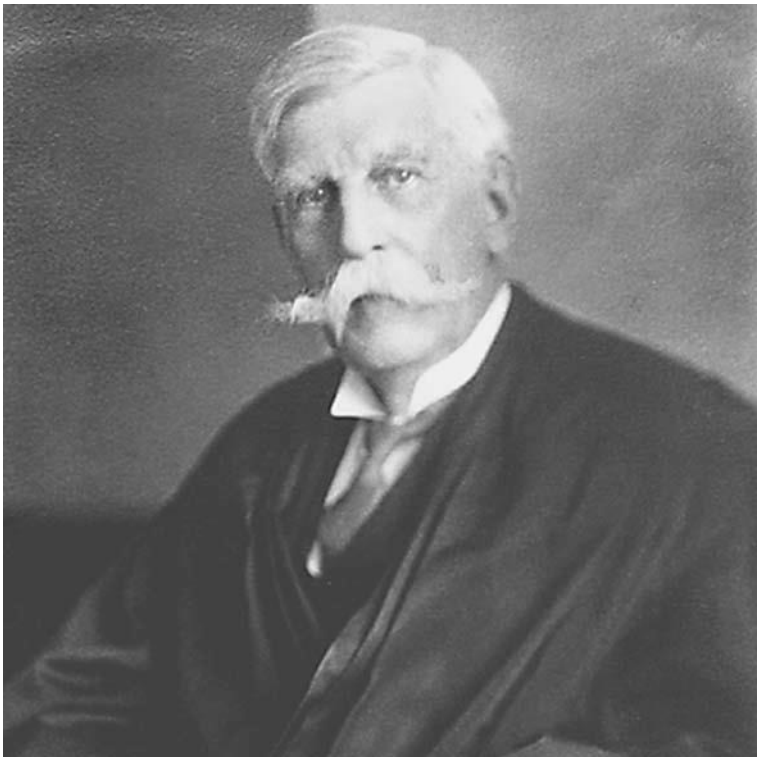
To help subsidize the growth of a competitive economy in the nineteenth century, realists have argued, U.S. judges commonly frowned on claims brought by litigants seeking monopolistic power. For example, in *Palmer v. Mulligan,* 3 Cai. R. 307, 2 a.d. 270 (1805), a downstream landowner asked the New York Supreme Court to grant him the exclusive right to use river water for commercial activity despite any injuries that might result to upstream owners. The court refused to grant such a right because if it did "the public would be deprived of the benefit which always attends competition and rivalry." In a subsequent case, the New York Supreme Court held that a landowner's right to enjoy his property could be "modified by the exigencies of the social state" (*Losee v. Buchanan,* 51 N.Y. 476 [1873]). The court added, "We must have factories, machinery, dams, canals and railroads."

At the same time the common law was facilitating economic expansion, realists claimed that it was also helping to increase the number of exploited U.S. citizens. Realists were skeptical of the traditional description of the U.S.

economy as a free market. They felt that the economy was regulated by common-law principles that safeguarded the interests of society's wealthiest members. In support of this contention, realists pointed to landlord-tenant laws that entitled lessors to evict lessees for technical breaches of their lease, labor laws that allowed management to replace striking workers, and contract laws that permitted employers to terminate their workers without justification.

The realists' economic analysis of law spawned two related movements in U.S. jurisprudence that occupy polar extremes on the political spectrum. One is the conservative law and economics movement, whose adherents, most prominent of whom is RICHARD POSNER, believe that common-law principles must be interpreted to maximize the aggregate wealth of society without regard to whether such wealth is distributed equally. The other is the liberal CRITICAL LEGAL STUDIES movement, whose adherents, called crits, believe that the law must be utilized to redistribute wealth, power, and liberty so that every citizen is guaranteed a minimum level of dignity and equality.

Since the mid-1900s, the crits have focused less on what they perceive as economic exploitation in the law, and more on what they see as political exploitation. In this regard they have assailed various U.S. courts for advancing the interests of adult, white, heterosexual males at the expense of women, blacks, and homosexuals. The crits have commonly referenced three cases to corroborate this point: *McCleskey v. Kemp,* 481 U.S. 279, 107 S. Ct. 1756, 95 L. Ed. 2d 262 (1987), in which the Supreme Court rejected a constitutional challenge to CAPITAL PUNISHMENT despite evidence that African American defendants are almost three times more likely than whites to receive the death penalty for murdering a white person; *Craig v. Boren,* 429 U.S. 190, 97 S. Ct. 451, 50 L. Ed. 2d 397 (1976), in which the Supreme Court ruled that the EQUAL PROTECTION Clause of the FOURTEENTH AMENDMENT provides less protection against discrimination for women than for members of other minority groups; and *Bowers v. Hardwick,* 478 U.S. 186, 106 S. Ct. 2841, 92 L. Ed. 2d 140 (1986), in which the Supreme Court refused to recognize a constitutional right to engage in SODOMY. However in 2003, the Supreme Court overturned the *Bowers* holding in LAWRENCE V. TEXAS 539 U.S.__, 123 S. Ct. 2472, 156 L. Ed. 2d 508.



Oliver Wendell Holmes Jr. started the legal realism movement when he published his book The Common Law *in 1881.*

RUTGERS UNIVERSITY LIBRARY.

The Persuasion and Characteristics of Individual Judges

The second strand of realist thought subscribes to the relativistic view that law is nothing more than what a particular court says it is on a given day, and that the outcome to a legal dispute will vary according to the political, cultural, and religious persuasion of the presiding judge. Some realists, such as JEROME N. FRANK, another prominent thinker in U.S. jurisprudence during the 1920s and 1930s, insisted that a judge's psychological and personality characteristics also sway the judicial decision-making process. Justice BENJAMIN N. CARDOZO of the Supreme Court went so far as to characterize judges as legislators in robes.

The notion that judges legislate from the bench was a revolutionary idea that flew in the face of orthodox legal thought in the eighteenth and nineteenth centuries. In *The Federalist,* no. 78, ALEXANDER HAMILTON enunciated the orthodox position when he said the judiciary is the "least dangerous branch" because it has "neither force nor will, but merely judgment." The legislature, Hamilton said, has the power to prescribe the rights and duties by which the country is to be regulated, and the executive has the obligation to enforce

these laws through the power of the sword. The role of the judiciary, Hamilton wrote, is simply to interpret and apply the laws passed by the other two branches.

Hamilton's view resonated in the opinions of Chief Justice JOHN MARSHALL, who wrote that "courts are the mere instruments of the law, and can will nothing" (*Osborn v. Bank of United States,* 22 U.S. [9 Wheat.] 738, 6 L. Ed. 204 [1824]). Judicial power, Marshall said, should never be exercised for the purpose of implementing the will of the judge. Instead, courts must exercise their power solely to implement the will of legislators, who, as the elected representatives of the American people, embody the "will of the law."

Hamilton and Marshall both believed that law is an autonomous body of knowledge independent and distinguishable from the personal preferences of the judge applying it, and that it is possible to interpret this body of knowledge in an objective fashion. Adherents to this theory of law are known as formalists. In the nineteenth century, formalists asserted that state and federal law constitute a rational system of rules and principles that judges can apply in a mechanical fashion to reach a clear, certain, and uncontroversial resolution to a legal dispute.

Realists, such as Justice Cardozo, questioned the formalists' assumption that law could be autonomous and objective, or produce demonstrably certain outcomes. In *The Nature of the Judicial Process,* a groundbreaking book first published in 1921, Cardozo argued that law is a malleable instrument that allows judges to mold amorphous words like *reasonable care, unreasonable restraint of trade,* and *due process* to justify any outcome they desire.

For example, courts are commonly asked to invalidate contracts on the ground that one party exercised duress and UNDUE INFLUENCE in coercing another party to enter an agreement. Cardozo noted that terms such as *duress* and *undue influence* are subject to interpretation. He argued that judges who are inclined to shape the law in favor of society's weaker members will construe them broadly, invalidating many contracts that stem from predatory behavior. On the other hand, judges who are inclined to shape the law in favor of society's stronger members will construe such words narrowly, allowing particular individuals to benefit from their guile and acumen.

Even when language is clear, Cardozo explained, the law often presents courts with competing and contradictory principles to apply and interpret. For example, in *Riggs v. Palmer,* 115 N.Y. 506, 22 N.E. 188 (1889), the New York Court of Appeals was presented with the question of whether a man could inherit under a will that named him as a beneficiary, even though he had murdered the testator, his grandfather. The lodestar of testamentary interpretation, Cardozo observed, is that courts must interpret a will according to the explicit intentions of the testator. In this case, juxtaposed with this seemingly unequivocal rule was the ancient maxim of equity, "No man shall profit from his own wrong." Depending on the outcome the court of appeals desired to reach in *Riggs,* Cardozo concluded, the panel of three judges could have relied on either legal axiom in support of its decision. In fact, the court was divided on the issue, with two judges voting to disinherit the murderous grandson, and the other voting to enforce the will.

Society's Welfare

Convinced that common-law principles can be manipulated by the judiciary, Cardozo was concerned that instability and chaos would result if every judge followed his or her own political convictions when deciding a case. To forestall the onset of such legal disarray, Cardozo and other realists argued that all judges must interpret the law to advance the welfare of society. In Posner's biography of Cardozo, he quotes him as saying, "Law ought to be guided by consideration of the effects [it will have] on social welfare." This theory of law is known as sociological jurisprudence, and represents the third major strand of thought in the U.S. legal realism movement. Proponents of sociological jurisprudence encouraged judges to consult communal mores, ethics, and RELIGION, and their own sense of justice when attempting to resolve a lawsuit in accordance with the collective good.

Sociological jurisprudence was foreshadowed by English philosopher JEREMY BENTHAM, who argued that the law must serve the interests of the greatest number of people in society. Bentham, whose legal philosophy is known as utilitarian jurisprudence, defined the collective good in terms of pain and pleasure. Judges should decide cases, Bentham thought, to achieve results that will maximize the pleasure

of the majority of the residents in a given community, without much concern for the pain that might be inflicted on the balance of society.

Some realists turned Bentham's philosophy on its head, arguing that the law should serve the interests of the most fragile members in society because they are the least represented in state and federal legislative assemblies. This group of realists was affiliated with the U.S. Progressive movement, which became popular during the first quarter of the twentieth century as it sought to reform society by enacting legislation to protect certain vulnerable classes of employees, particularly women and children, from harsh working conditions. These realists were among the most vocal detractors from the Supreme Court's decision in *Lochner,* which struck down a state law prescribing the maximum number of hours employees could work during a given week in the baking industry.

A Practical Approach to a Durable Result

Whereas sociological jurisprudence sought to utilize the common law as an engine of social reform, legal pragmatism, the fourth strand of realist thought, sought to employ common-law principles to resolve legal disputes in the most practical way. Pragmatists argued that a judge should undertake a four-step process when rendering an opinion.

First, the judge must identify the competing interests, values, and policies at stake in the lawsuit. Second, the judge must survey the range of alternative approaches to resolving the legal issues presented by the lawsuit. Third, the judge must weigh the likely consequences of each approach, considering the effect a particular decision may have on not only the parties to the lawsuit but also other individuals faced with similar legal problems. Fourth, the judge must choose a response that will yield the most durable result in the course of the law. This pragmatic legal philosophy is often characterized as result-oriented jurisprudence.

A Synthesis of Legal Philosophies

The fifth strand of realist thought, legal empiricism, attempted to synthesize the other four strands into a single jurisprudence. Made famous by Holmes, legal empiricism claimed that law is best explained as a prediction of what judges will do in a particular case. Empiricists, who were influenced by behaviorists Ivan Pavlov and B. F. Skinner, argued that lawyers can predict the outcome of legal disputes by examining the judicial behavior of a given court.

The empiricists' efforts to integrate the other four schools of legal realism into one coherent philosophy was reflected by their belief that judicial behavior can be influenced by political, economic, sociological, practical, and historical considerations, as well as personal and psychological prejudices and idiosyncrasies. Lawyers and laypersons who spend more time studying these elements and less time studying the labyrinth of legal rules and principles that make up the law, the empiricists concluded, will have a better idea of how a judge will rule in a particular case.

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LEGAL REPRESENTATION

The legal work that a licensed attorney performs on behalf of a client.

Licensed attorneys have the authority to represent persons in court proceedings and in other legal matters. When hiring an attorney, a careful consumer considers a number of variables, including the nature and importance of the case, the attorney's fee and payment arrangement, personal chemistry with the attorney, and the attorney's reputation.

Self-Representation

If a case is simple, a person may wish to represent himself, or proceed PRO SE. The courts usually discourage self-representation because legal practice requires special skills, and an unschooled pro se party is usually at a disadvantage in court. Even attorneys are well advised to hire another attorney for personal legal problems.

Advertising

Many attorneys advertise their services. Attorneys must obey all applicable advertising laws and must follow rules of professional conduct related to advertising. Under these rules they may not make false or misleading claims, create unjustified expectations, or compare the services of another attorney unless the comparison can be factually substantiated. An attorney may not make in-person or live telephone solicitations unless the attorney is related to the person or has a professional relationship with the person. An attorney may not contact an individual after he or she indicates a desire that the solicitations cease, and an attorney may not coerce or harass prospective clients. Aside from these and similar restrictions, attorneys generally are free to use the various media to promote their services.

Duties and Obligations

LEGAL REPRESENTATION places duties on both the client and the attorney. The client should provide the attorney with all information relevant to the case and keep the attorney apprised of new information. The client should be completely honest about the case with the attorney. The client also should follow the attorney's directives.

The client has an obligation to pay the attorney for the representation. If the client does not make timely payment, the attorney may decline to perform further work for the client. An attorney also may discontinue representation if the client wants the attorney to perform an unethical or illegal act, the client lies and refuses to correct the lie, the client makes representation unreasonably difficult, or the attorney discovers a CONFLICT OF INTEREST.

Generally, a conflict of interest is any circumstance that adversely affects a client, or limits the loyalty of the attorney to a client. For example, assume that an attorney regularly represents a corporation. A new client seeks the attorney's representation in a suit against the same corporation. Representing the new client would be a conflict of interest. Generally, the attorney would not be able to take the case or continue representation after the conflict was discovered. However, the attorney may continue representation if he does not believe that the conflict would adversely affect the relationship with the corporation, and if both the corporation and the client agree to the attorney's representation. In practice, continued representation where there is a conflict of interest is rare.

If an attorney must withdraw from representation, he must act to protect the interests of the client. This may involve helping the client find another attorney, postponing court dates, and surrendering papers and documents relevant to the case. The attorney must return to the client any money owed to the client under the fee agreement.

An attorney has many obligations to his or her client. He must zealously defend the interests of the client and respond to the client's concerns. He must communicate with the client, keeping the client informed about the status of the case and explaining developments so that the client can make informed tactical decisions. He must abide by the client's decisions regarding the objectives of the representation. With few exceptions an attorney may not divulge client communications to outside parties without the client's consent.

Attorneys are OFFICERS OF THE COURT, and as such they must follow the law and obey ethical constraints. They may not harass persons in the course of representation. They may not assist a client who they know will not tell the truth about the case. An attorney should not begin a romantic affair with the client during the course of legal representation. In most states such behavior is an ethical violation. No attorney in any state may perform legal services in exchange for sexual relations.

Fees

Attorneys' fees vary by attorney and by case. An attorney may charge a client in several different ways. The most common forms of billing include flat fees, hourly rates, contingent fees, and retainers.

A flat fee is a dollar amount agreed to by the attorney and the client before the attorney begins work on the case. The flat fee is favored by many attorneys because it is a simple transaction and because the attorney is paid at

IN FOCUS

Hiring an Attorney

The first task in hiring an attorney is to find one who can manage the particular legal problem at issue. All attorneys are not equally skilled in every area of the law. Like many other professionals, attorneys tend to specialize in certain areas of practice such as contracts, patents, family matters, taxes, personal injuries, criminal matters, and business matters. A person facing criminal charges, for example, will want to contact an attorney who specializes in criminal defense work, not a patent attorney.

Some attorneys are known for their skill in certain types of cases within a specialty. For example, a criminal defense attorney may be competent to handle any criminal case, but may be especially proficient in drunk driving cases or homicide cases. Attorneys who specialize in certain types of cases often have developed a network of helpful contacts and have a great deal of experience with the kinds of issues involved in these cases.

Some attorneys are general practitioners, proficient in a broad range of legal topics. These attorneys are generally less expensive than specialists. However, if a general practitioner is not competent in a particular area, she may need to put more time and effort into the case than would a specialist, and the client will have to pay for this extra work.

Many businesses specialize in making attorney referrals at no charge to the consumer. They offer lists of attorneys categorized by area of expertise or type of client. For example, some referral services list attorneys who specialize in representing persons of color, women, or gay men and lesbians.

After obtaining a list of qualified attorneys, the consumer should have an initial consultation with several attorneys if possible. Some attorneys offer such a consultation at no cost, whereas others may charge a nominal fee. In either case the initial consultation does not obligate the consumer to hire that attorney or firm.

At the initial consultation, the potential client should provide the attorney with as much information as possible about the case. Relevant information may include pictures, witness statements, and other documents. This information helps the attorney make an informed judgment about the case.

The attorney generally does not give legal advice at the initial consultation. Instead, the attorney will ask questions to determine whether he is able to represent the consumer. The attorney will not begin to work on the case until a fee arrangement has been reached with the consumer.

In deciding whether to retain a particular attorney, the consumer should look at a number of issues. If money is a consideration, the consumer should weigh the attorney's fee against the importance of the case. For example, the consumer may be willing to spend more money on an attorney if facing criminal charges than if involved in a minor civil matter.

If the consumer and the attorney will need to meet frequently during the representation, the consumer should consider the location of the attorney's office and required travel time.

Another consideration is personal chemistry. Attorneys and clients do not have to be friends, but they should have some rapport so that they can work together. If the consumer does not feel comfortable with an attorney, she should find another attorney.

If time is a consideration, the consumer should ask how long the attorney expects the case to last. Some attorneys work more quickly than others.

A consumer should also consider the reputation of the attorney. Attorneys usually are willing to provide a list of previous clients as references. All states have a PROFESSIONAL RESPONSIBILITY board that oversees the conduct of attorneys in the state. These boards may be able to give consumers information regarding ethical violations by attorneys. The consumer also may want to ask if an attorney has malpractice insurance, which compensates clients who are victims of incompetent legal work.

the beginning of the representation. The attorney identifies the amount of work that the case will require and calculates a reasonable fee based on the time and effort involved. If the attorney spends less time on the matter than anticipated, the attorney may keep the excess payment, unless the attorney and client agree otherwise. Conversely, the attorney who charges a flat fee may not later demand more money if the case requires more time and effort than originally anticipated.

An hourly rate is a predetermined amount charged for each hour of the attorney's work. The attorney and client may agree that hourly fees are to be paid periodically, or in one lump sum at the end of the case. The time that an attorney charges for legal work is called billable time, or billable hours. Hourly rates vary according to the attorney's expertise and experience. Some critics have argued that hourly rates discourage quick work and expedited resolutions. Before agreeing to an hourly rate, prospective clients should ask

for a written estimate of the number of billable hours that the attorney anticipates will be necessary to complete the matter.

A CONTINGENT FEE is a percentage of the amount recovered by the client. A contingent fee is not paid by the client until the client wins money damages from a defendant. Attorneys offer such a fee if the client stands a good chance of winning a sizable cash settlement or judgment. Contingent fees cannot be used in divorce cases, CHILD CUSTODY cases, and criminal cases.

Contingent fees are a gamble for the attorney. If the client does not win the case or wins less money than anticipated, the attorney may work for no or little pay. Common contingent fees range from 20 to 40 percent of the client's recovery. For PERSONAL INJURY and MEDICAL MALPRACTICE cases, laws in all states limit the percentage that an attorney may receive from a client's recovery. For other cases the percentage is negotiable between the client and attorney.

A client may retain an attorney for a specific period of time rather than for a specific project. In return for regular payment, the attorney agrees to be on call to handle the day-to-day legal affairs of the client. Most individuals do not have enough legal matters to keep an attorney on retainer.

The term *retainer* also refers to an initial fee paid by the client. Retainers often are used by attorneys who charge an hourly rate, and some attorneys add an initial retainer to a contingent fee.

Pro Bono Services

The term *PRO BONO* means "for the good." In practice pro bono describes legal work performed free of charge. Pro bono work is not required of attorneys in most jurisdictions, but courts occasionally appoint attorneys to represent an indigent client free of charge. Under Rule 6.2 of the American Bar Association's Model Rules of Professional Conduct, a lawyer may refuse an appointment, but only if: (1) the appointment would somehow violate another rule of conduct (such as conflicts of interest) or law; (2) the appointment would unreasonably burden the lawyer; or (3) the lawyer finds the appointment so repugnant that he would not be able to effectively represent the client. Attorneys often perform pro bono work in order to contribute to their community and create goodwill for the firm.

Public Legal Services

Legal services organizations exist in all states to provide free or low-cost legal services to qualified persons. Legal services offices are funded by a variety of sources, including private businesses, private individuals, the interests from lawyer trust accounts, and federal, state, and local governments. Civil matters such as bankruptcies, divorces, and landlord-tenant disputes are handled by LEGAL AID agencies. Criminal matters are handled by state public defenders.

Private Legal Services

Some organizations sell "legal insurance" for a fee. Legal insurance is a form of prepaid legal service in which the consumer pays a premium to cover future legal needs. Such a service may be offered through labor unions, employers, or other private businesses. Most legal insurance policies do not cover all types of legal matters, and the policyholder may not be entitled to choose his lawyer. The consumer should determine the scope and nature of the legal representation offered in legal insurance packages.

Other Considerations

If a client does not believe he or she has received competent legal representation, the client has several options. In a criminal case, if a convicted defendant believes he received incompetent representation, the defendant can address the issue on appeal, and the appellate court may reverse the verdict. If a client believes that an attorney has committed misconduct, the client may contact the board of PROFESSIONAL RESPONSIBILITY in the state in which the attorney practices. If an attorney is found to have violated the law or the applicable professional conduct code, the attorney is subject to discipline by the board. Discipline can range from a reprimand to revocation of the attorney's license.

In some states if an attorney and client have a dispute over fees, the attorney may place a lien on the client's money or PERSONAL PROPERTY. There are two types of attorney liens: a retaining lien and a charging lien. A retaining lien gives the attorney the right to retain money or property belonging to the client until the client pays the bill. The attorney does not have to go to court to do this, but the judge may order a hearing at the request of the client to determine

whether the attorney has good reason to keep the money or property.

A charging lien gives an attorney the right to be paid from the proceeds of a lawsuit. For example, if an attorney charges a client a contingency fee and the attorney wins a large monetary award for the client, the attorney is entitled to a predetermined share of the award. Generally, the attorney may keep a certain amount for services rendered even if he was fired by the client. However, if a court finds that the client properly fired the attorney for misconduct, the attorney may not be entitled to any portion of the client's award.

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CROSS REFERENCES

Attorney-Client Privilege; Attorney Misconduct; Attorney's Lien; Client Security Funds; Ethics, Legal; Legal Advertising; Legal Malpractice; Practice of Law; Professional Responsibility; Right to Counsel.

LEGAL REPRESENTATIVE

In its broadest sense, one who stands in place of, and represents the interests of, another. A person who oversees the legal affairs of another. Examples include the executor or administrator of an estate and a court appointed guardian of a minor or incompetent person.

This term is almost always held to be synonymous with the term personal representative. *In accident cases, the member of the family entitled to benefits under a wrongful death statute.*

LEGAL RESERVE

Liquid assets that life insurance companies are required by statute to set aside and maintain to assure payment of claims and benefits. In banking, that percentage of bank deposits that must by law be maintained in cash or equally liquid assets to meet the demands of depositors.

LEGAL RESIDENCE

The place of domicile—the permanent dwelling—to which a person intends to return despite temporary abodes elsewhere or momentary absences.

A person can have several transitory residences, but is deemed to have only one LEGAL RESIDENCE.

LEGAL RIGHT

An interest that the law protects; an enforceable claim; a privilege that is created or recognized by law, such as the constitutional right to freedom of speech.

LEGAL SERVICES CORPORATION

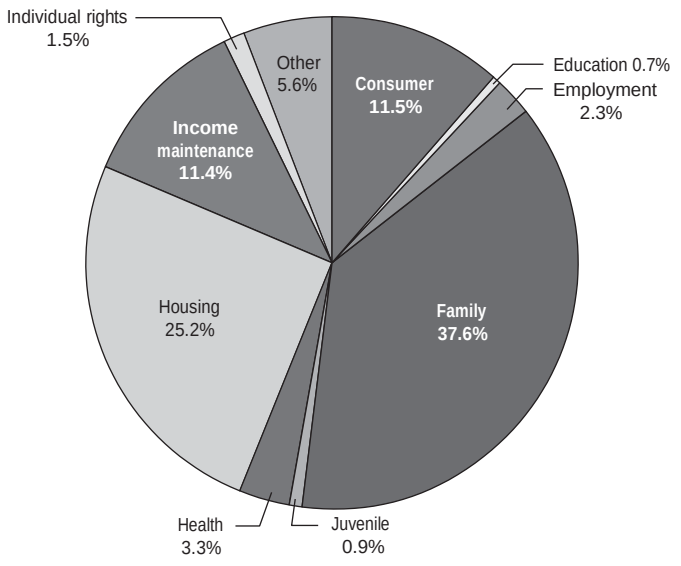
The Legal Services Corporation (LSC) is a private, nonprofit organization established by Congress in 1974 to provide financial support for legal assistance in civil matters to people who are poor (Legal Services Corporation Act of 1974, 42 U.S. C.A. § 2996 et seq.). The LSC receives funds from Congress and makes grants to local nonprofit programs run by boards of directors made up of local lawyers, community leaders, and client representatives. LSC support is an essential part of LEGAL AID funding in the United States. However, the organization has attracted opposition from fiscal conservatives who wish to abolish it.

The federal government began to make direct grants to legal aid organizations in 1965, during President LYNDON B. JOHNSON's war on poverty. Studies revealed that states were doing an inadequate job of providing legal assistance to people who were poor, especially in the South, the Southwest, and much of the Midwest. The Legal Services Corporation (LSC) was established in 1974, during the Nixon administration, to establish a structure for distributing funds to qualified local providers of legal aid that was permanent and immune to political pressure.

The LSC is governed by an 11-member board of directors, appointed by the PRESIDENT

Legal Services Corporation

ELIGIBLE CASES CLOSED, BY TYPE, IN 2007



SOURCE: Legal Services Corporation, *Fact Book 2007*, June 2008.

ILLUSTRATION BY GGS CREATIVE RESOURCES. REPRODUCED BY PERMISSION OF GALE, A PART OF CENGAGE LEARNING.

OF THE UNITED STATES with the ADVICE AND CONSENT of the Senate. No more than six members may be of one political party, and at least two members must be eligible clients. Through its Office of Field Services and its regional offices, the LSC distributes grants to legal services programs operating in neighborhood offices in all 50 states, the DISTRICT OF COLUMBIA, Puerto Rico, the Virgin Islands, and Micronesia. Less than 5 percent of its budget is spent on the administration costs for the home office; the rest goes to community programs.

The LSC supports local legal aid programs through training, research, sharing of information, and technical assistance. LSC funding goes to 137 independent nonprofit legal aid programs with 923 offices throughout the country. It also funds 16 national support centers that provide specialized assistance to attorneys in representing their clients. Most of these support centers specialize in substantive areas of the law, such as housing, administrative benefits, and health. Others specialize in the unique legal problems of particular groups, such as Native Americans, migrant farm workers, immigrants, and older people. Staff members of the support centers may become directly involved in litigation on behalf of their clients. The 2009 LSC budget was $350 million.

General research is conducted by the LSC Institute on Legal Assistance. The institute is devoted to substantive study of the broad range of legal problems encountered by poor people that relate to the services provided by legal aid programs. The research projects of the institute fall into five broad categories: problems posing the most serious consequences to people who are poor, such as income security and health benefit programs; gaps in substantive poverty law, such as rural issues; studies of agencies that provide benefits to people who are poor, such as WELFARE agencies and public hospitals; projects to prevent legal controversies and to create new procedures for settling disputes; and ways to evaluate how special legal institutions such as housing and small-claims court affect people who are poor. The institute also conducts seminars and holds meetings on these topics and others that deal with the effect of the law on poor people.

The LSC has been under attack for many years by conservative politicians and other groups that allege that the legal aid programs it funds have engaged in political and lobbying activities, often at the expense of providing legal services needed by people who are poor. Critics argue that the LSC has been the legal pillar of the welfare state, opposing efforts by conservatives to rein in government programs. Congressional Republicans have sought either to drastically reduce funding of the LSC or to abolish the LSC altogether. Such efforts have had an impact on the LSC. Congress allocated $415 million for the program in 1995, compared with $350 million in 2009. The LSC budget would need to be raised by 30 percent to achieve parity in real dollars with the 1995 budget.

In 2006 the LSC approved a document entitled *Strategic Directions 2006–20010*. The report listed a series of strategic decisions that were needed to implement two goals: increasing public awareness of, and support for, civil legal services to low-income persons and enhancing the quality and compliance of legal services programs. Strategies for achieving these goals include use of better communication, technology, and improved program oversight.

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Equal Protection; Legal Aid

LEGAL SPECIALIZATION

State-regulated legal certification programs allow attorneys to be recognized as "board-certified" experts in their practice areas. The certification process is overseen either by state bar associations or state supreme courts and is designed to prevent the public from being misled by unscrupulous attorneys who claim they are specialists without having BONA FIDE credentials to back up the claim. As of 2007, 18 states had adopted legal certification programs. LEGAL SPECIALIZATION certification had been debated for decades, but the argument heated up in the 1970s and early 1980s, when federal and state courts struck down rules that prohibited attorneys from advertising in the media and in telephone books. As phone companies began to sell advertising in different fields of law, national bodies such as the National Board of Trial Advocacy (NBTA) began certifying specialists in civil and criminal litigation, and lawyers continued to become more specialized in their practices. By the late 1980s, certified legal specialist programs had gained momentum. The AMERICAN BAR ASSOCIATION (ABA) set up a Standing Committee on Specialization and, in 1993, adopted a set of voluntary standards. In addition, the ABA agreed to accredit private national certification programs that met the ABA standards. By 2007, more than 25,000 U.S. lawyers had been accredited as legal specialists.

Certification rules vary from state to state, but each lawyer must fulfill four major requirements to be deemed a certified specialist. He or she must provide evidence of substantial involvement in the specialty area and references from lawyers and judges. He or she must have completed 36 credit hours of specialty CONTINUING LEGAL EDUCATION (CLE) in the three years preceding the application. He or she must have been admitted to practice and be a member in good standing in one or more states. Finally, he or she must be recertified at least every five years and be subject to revocation of the certification for failure to meet the program's requirements.

State legal certification boards accredit independent agencies to perform the actual testing and certification. This process minimizes the costs incurred by the certification boards and places the cost of the programs on the lawyers who wish to be certified and who must pay application fees to the independent agencies. National organizations that are authorized to certify specialists include the NBTA, the American Board of Certification, and the National ELDER LAW Foundation. In addition, many state bar associations are authorized to certify specialists. Eleven certification programs have been accredited. The specialties include civil trial practice; CRIMINAL LAW; FAMILY LAW trial advocacy; business and consumer BANKRUPTCY; creditor's rights; legal, medical, and accounting professional liability; elder law; and estate planning law.

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LEGAL TENDER

All U.S. coins and currencies—regardless of when coined or issued—including (in terms of the Federal Reserve System) Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations that are used for all debts, public and private, public charges, taxes, duties, and dues.

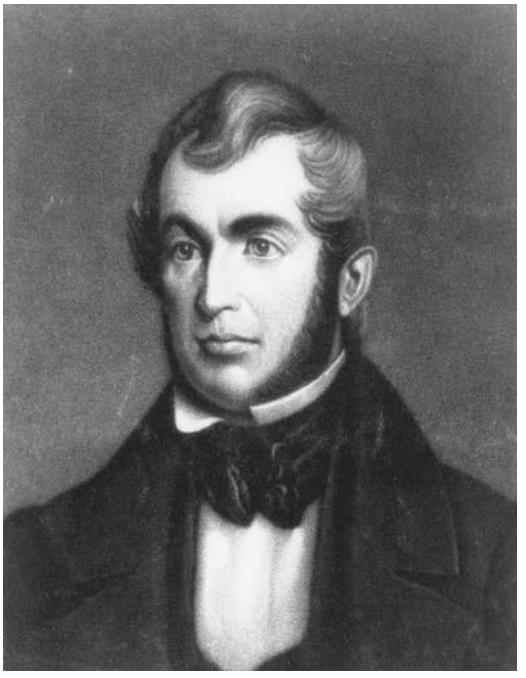
LEGAL TITLE

Ownership of property that is cognizable or enforceable in a court of law, or one that is complete and perfect in terms of the apparent right of ownership and possession, but that, unlike equitable title, carries no beneficial interest in the property.

LEGALESE

Slang; technical jargon used by attorneys that is often beyond the comprehension of the nonlawyer.

States enact "plain English" laws that require the translation of legalese into everyday



Hugh S. Legare. LIBRARY OF CONGRESS.

language to permit consumers to understand thei insurance policies, deeds, mortgages, leases, credit card financing agreements, and other legal documents.

OUR COUNTRY EXHIBITS THE LAST SPECIMEN OF THAT FORM OF GOVERNMENT, WHICH HAS DONE SO MUCH FOR THE DIGNITY AND HAPPINESS OF MAN. —HUGH SWINTON LEGARE

v LEGARE, HUGH SWINTON

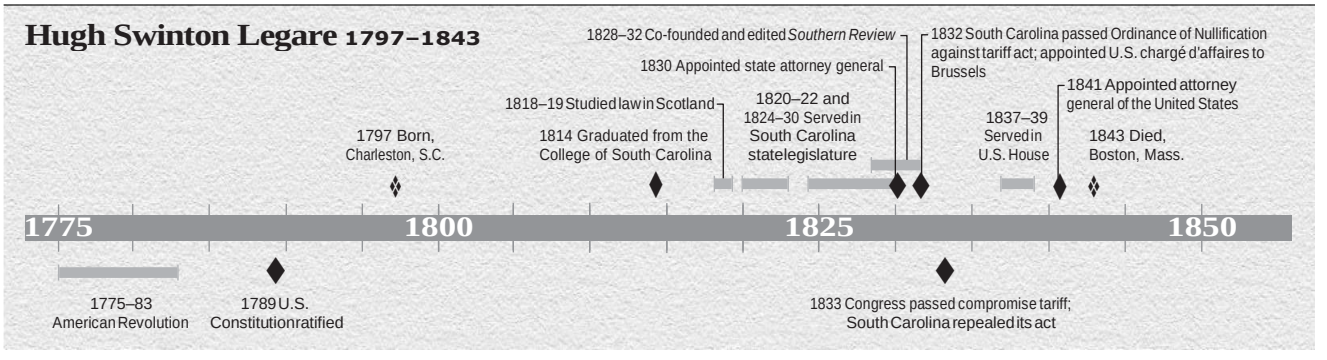
Hugh Swinton Legare was a lawyer, a legal scholar, and an attorney general of the United States under President JOHN TYLER.

Born January 2, 1797, in Charleston, South Carolina, to a wealthy French Huguenot father, both Legare and his sister, Mary, enjoyed a privileged upbringing and social advantages. But the family's money and influence could not cure the boy's severe physical deformity. Prevented from strenuous physical activity, Legare turned his attention to scholarly pursuits, at which he excelled.

Legare studied at Moses Waddel's Academy and the College of South Carolina and graduated in 1814. He worked toward degrees in law and languages in the United States (1814–17) and in Scotland (1818–19). Legare's interest in Roman and CIVIL LAW was developed at Edinburgh University under the tutelage of Professor Dugald Stewart. Stewart, a disciple of legal philosopher Friedrich von Savigny, praised the systematic character of ROMAN LAW, and argued that Anglo-American COMMON LAW could be made more precise and scientific by the application of the principles of deductive reasoning. Legare embraced the notion that law—like geometry—could be treated as a deductive science, and it became a lifelong interest.

Legare wrote extensively on law, legal philosophy, and classical literature throughout his life. As a young man, he partnered with botanist Steven Elliot, Sr., and other prominent Charleston intellectuals to establish a quarterly magazine that was devoted to all disciplines of scholarly writing. According to its masthead, the *Southern Review* proposed "to offer to our fellow citizens one Journal in which they may read without finding themselves the objects of perpetual sarcasm." Legare was a principal contributor until the death of his partner and the demands of his political career caused the magazine to fold.

Legare entered politics shortly after his return to the United States in 1819. He settled on St. John's Island, off the South Carolina coast, with the intention of developing a cotton plantation, but his physical limitations soon forced a change of plans. Within a year, he was



elected to represent St. John's Island in the South Carolina state legislature.

In 1822 Legare gave up his plantation and moved back to his family home in Charleston. He practiced law and campaigned for re-election to the state legislature—this time as a representative from Charleston. He was elected in 1824 and served until 1830, when he was named state attorney general.

During Legare's tenure as state attorney general, the nullification crisis in South Carolina came to a head. (Nullification is a doctrine that asserts the right of a state to prevent within its borders the enforcement of an act of the federal government that is not authorized by the U.S. Constitution as interpreted by the highest legislative authority of the state.) Convinced that the 1828 and 1832 federal tariff laws favored Northern industry and threatened Southern SLAVERY, the South Carolina legislature declared them to be unconstitutional and threatened to secede from the Union if the federal government moved to enforce them. Legare opposed the nullification group, spoke on behalf of the Union, and cautioned the federal government against any exercise of authority that might "tip the political balance ... toward the nullifiers" and stir the citizens to secession. For his efforts he was rewarded with a diplomatic post in Brussels. Legare was named U.S. chargé d'affaires in 1832.

After fulfilling his obligations in Brussels and enjoying an extended tour of Europe, Legare returned to the United States in the fall of 1836. On his return, he was elected as a Union Democrat to represent South Carolina in the U.S. Congress. He was defeated in the 1838 election because his view of fiscal policy did not coincide with that of his constituents.

Following his defeat, Legare returned to Charleston and, for the first time in his career, concentrated on the PRACTICE OF LAW. He tried a number of important cases and made his mark in the South Carolina and federal courts. U.S. Supreme Court justice JOSEPH STORY said, "His argumentation was marked by the closest logic; at the same time he had a presence in speaking I have never seen excelled."

Legare also returned to writing, authoring articles on Demosthenes, Athenian democracy, and Roman law. During the presidential campaign of 1840, Legare affiliated with the WHIG PARTY, and he began a series of articles in support of WILLIAM HARRISON, and later Tyler, which appeared in the *New York Review.*

In appreciation for his support, President Tyler named Legare to be attorney general of the United States in 1841. Because of his foreign-service experience in Belgium and his thorough knowledge of both civil and INTERNATIONAL LAW, Legare was a highly regarded member of the cabinet. As attorney general, Legare replaced DANIEL WEBSTER on the Ashburton Treaty Commission. He is credited with contributing important portions of the treaty that pertained to the right of search.

When Webster resigned as SECRETARY OF STATE in May 1843, Legare assumed a number of his duties and was named secretary AD INTERIM. A month later, on June 20, 1843, Legare died suddenly while accompanying President Tyler to the dedication of the monument at Bunker Hill, in Boston.

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LEGATEE

A person who receives personal property through a will.

The term *legatee* is often used to denote those who inherit under a will without any distinction between real property and PERSONAL PROPERTY, but technically, a *devisee* inherits real property under a will.

LEGATION

The persons commissioned by one government to exercise diplomatic functions at the court of another, including the minister, secretaries, attachés, and interpreters, are collectively called the legation *of their government. The word also denotes the official residence of a foreign minister.*

LEGES HENRICI

[Latin, Laws of Henry.] *A book written between 1114 and 1118 containing Anglo-Saxon and Norman law. It is an invaluable source of knowledge of the period preceding the full development of the Norman law.*

LEGISLATE

To enact laws or pass resolutions by the lawmaking process, in contrast to law that is derived from principles espoused by courts in decisions.

LEGISLATION

Lawmaking; the preparation and enactment of laws by a legislative body.

Legislative bodies exist to enact legislation. The legislative process is a series of steps that a legislative body takes to evaluate, amend, and vote on proposed legislation. The U.S. Congress, state legislatures, county boards, and city councils engage in the legislative process. Most legislation is enacted by Congress and state legislatures. Implementation of legislation is left to other entities, both public and private, such as law enforcement agencies, the courts, community leaders, and government agencies.

Legislative Bills

Legislation begins with the submission of a bill to the legislature for consideration. A bill is a draft, or tentative version, of what might become part of the written law. A bill that is enacted is called an act or statute. The selection of appropriate and clear language for the proposed piece of legislation is critical. Legislators need to understand what is intended by the bill and who will be affected by it.

A bill is amended to accommodate interested and affected groups and to eliminate technical defects. More legislative attention is generally devoted to decisions on amendments than to disputes over whether a bill will be passed. An able legislator or supporter of a piece of legislation constantly seeks ways to silence opposition or convert opponents into supporters. Many important provisions that finally become law are adjusted by amendments in order to accommodate conflicting viewpoints.

Sources of Legislation

Ideas for legislation come from many sources. Legislators who have experience and knowledge in a particular field introduce bills that they think will improve or correct that field. They often copy existing legislation because an idea that works well in one jurisdiction can be useful in another. For example, in the 1970s, legislation that created "no-fault" divorces was copied from state to state.

Legislators receive proposals from the National Conference of Commissioners on Uniform State Laws, a coalition of over three hundred lawyers, judges, and law professors, who are appointed by the states. Conference members draft proposals of uniform and MODEL ACTS. Such acts attempt to establish uniformity in a single legislative area. For example, the UNIFORM PROBATE CODE is an attempt to standardize U.S. probate law, and has been widely enacted.

The Council of State Governments, the American Law Institute, the AMERICAN BAR ASSOCIATION, and numerous other organizations all produce model acts for legislatures. Even if a uniform or model act or a law used in a neighboring state is not totally applicable, it is easier to edit and revise it than to draft a new one.

Legislation is not motivated solely by existing ideas. Modern legislation is often concerned with changing or protecting social and economic interests. Interest groups usually become involved in the legislative process through lobbyists, who are persons they hire to act for them. Often lobbyists work to protect the STATUS QUO by defensive lobbying, that is arguing against a piece of legislation. Other times lobbyists propose a bill. Whether opposing or proposing change, lobbyists typically inform legislators about the expected effect that legislation will have on their particular interest group. Lobbyists also influence legislation through financial contributions to the political campaign committees of legislators.

Modern legislatures have a large staff that helps prepare legislation. On occasion, studies are authorized when a problem is recognized and no solution is readily available. Major legislation often starts with a blue-ribbon legislative commission, which might include citizen members and an independent staff from the academic community. A handful of states have created permanent law revision commissions, which operate independently of the legislature.

In addition, most states have independent offices that act as editors, putting legislative

ideas into formal, statutory language that conforms to current usage in the jurisdiction. Modern legislation has become increasingly lengthy and complex, making it difficult for a single legislator to craft a bill alone.

Legislative Procedure

The procedure by which legislation is enacted varies within the following general structure.

A constitution is the basic charter for governments in the U.S. legal system. Constitutions typically specify that some kinds of legislation, like a capital expenditure, require an extraordinary vote, such as passage by two-thirds rather than by a simple majority. Three separate readings, or announcements, of a bill to the full house, are commonly required before a vote can be taken. Some constitutions require a detailed reading each time, but legislatures have found ways to circumvent this mandate.

Constitutions often require an affirmative vote by a majority of all the members of a house, not merely those present, in order to pass a bill. They can also require that the names of members voting aye and nay be recorded in the journal of the legislative body. Constitutions can authorize the executive to veto legislation, and establish a procedure for the legislature to override a veto. Sometimes a specific period of time is prescribed for the legislative session or term, and all work must be completed before expiration of the session.

It is common for a constitution to require that a bill pertain to only one subject, which must be expressed in the title of the bill. For example, An Act to Increase the State SALES TAX from Six to Seven Percent is a proper title for a bill that does exactly that and nothing else. This requirement efficiently packages legislative work, significantly affecting procedure, order, and efficiency. It does not apply to the U.S. Congress, but often applies to state and local legislatures.

Each legislature adopts its own rules to detail the organization and procedure of its body. A standard version of legislative rules is often adopted to cover any situation not governed by a specific rule. Legislatures frequently need to depart from regular procedure in order to accomplish tasks. Therefore, special rules usually provide for the suspension of normal procedure, when necessary. A rules suspension can be allowed only by a two-thirds vote.

Some of the work of the legislature can be accomplished by resolution rather than by bill. A resolution is used to settle internal matters or to make a public pronouncement without enacting a law. Resolutions are used to adopt the rules of the house, to establish committees, to initiate investigations, and to authorize and hire legislative employees. Even more mundane daily work can be accomplished by a motion on the floor. A motion lacks the formality of a resolution in that it cannot be formally announced and printed in the record.

A resolution takes one of several forms. A senate resolution or assembly resolution is adopted by only one house. A JOINT RESOLUTION originates in one house and then is passed in the other house, having the full force of official legislative action. This is the customary form for proposing state constitutional amendments and ratifying amendments to the U.S. Constitution. A CONCURRENT RESOLUTION, like a joint resolution, originates in one house and is assented to by the other. It lacks the legal effect of a normally adopted joint resolution, and is often used to express an opinion. Petitions from state legislatures to the president or to the U.S. Congress are drawn as concurrent resolutions. Commendations to persons who have performed socially significant deeds and to victorious athletic teams are typical concurrent resolutions.

The Enactment of a Bill

A bill must follow certain customary steps through a legislature. It is introduced by an elected member who acts as a sponsor. The chief sponsor, who might or might not be the author of the bill, is the legislator who manages the bill as it progresses through the body and who explains it to other legislators. The bill may also have cosponsors, who attach their names to the bill to add support.

When the bill is introduced, it is referred to a standing committee. Whenever possible the bill's sponsors and the legislative leadership attempt to steer the bill to a particular committee. In most legislatures there is room for discretion in the reference of bills. Major legislation might have to be referred to several committees, so the issue might be who receives it first.

Once the bill is referred, the committee must be convinced to place it on the agenda so that it can be considered and passed. The

committee chair is in charge of the committee, and requests for a slot on the agenda of the committee must be directed to the chair and the chair's staff. An autocratic chair can decide which bills to consider without consulting committee members, but much of the work of a committee is done by consensus.

Competition for committee time is generally intense. Usually bills that are heard are essential, popular, or generally beneficial. Occasionally they are noncontroversial or not especially appealing to the chair. A bill can even be scheduled merely to impede another, unfavorable proposal. If a spot cannot be attained on the agenda, a sponsor can seek consideration by a subcommittee so that a rough proposal can be polished into a draft that will be more appealing to the full committee.

Legislative procedure is designed so that a bill is heard when a need for it is demonstrated. Unnecessary or poorly drafted bills are bottled up in committees where no one takes time to consider them. As a bill approaches passage, it becomes more difficult to amend it or kill it. Efforts made early in the history of the bill are generally more effective. For example, fewer members have to be persuaded when a bill is still being considered by a committee, and fewer compromises have to be made.

If a committee decides not to act on a bill and tables it, that bill is effectively stopped for that session of the legislature. If the committee recommends that the bill be indefinitely postponed, the bill is formally killed and that recommendation is reported to the floor as a committee report to be confirmed by house vote. ADOPTION of the committee report officially kills the bill. If the committee recommends that the bill be passed, the bill is submitted to the floor with a favorable report, which is essential to its passage. If the bill must go through more than one committee, the first committee must then refer it to the second, and the first favorable decision gives it some momentum toward success.

After a legislative body approves a favorable committee report, the bill is placed on the agenda for floor action, or action by the full body. The agenda can be lengthy. During its wait for floor action, the bill is subject to a motion to refer it again to the same committee or any other committee for reconsideration. Making a successful motion to refer it again is a classic method of defeating a bill without taking the difficult step of going on record against it on a final vote.

In most state legislatures, a bill is first considered on the floor in a committee of the whole, in which every member of the house sits as a committee to debate the bill. A committee of the whole is derived historically from the desire of early English parliaments to act in semisecrecy, without recorded votes that the queen or king could monitor. The idea has survived, and legislators continue to act without suffering the political consequences of an unpopular vote on the record.

Procedurally, the consideration of a bill by a committee of the whole allows debate without limits on the duration of time or number of times a member can speak. It also provides an interval between the first formal floor consideration and final passage of the bill, which permits more time for careful deliberation.

The use of the committee of the whole has, however, declined. More bills are submitted for deliberation by the legislative body and final vote while the subject is still fresh in the members' minds. A legislature can, therefore, eliminate use of the committee of the whole for some types of bills, for special circumstances, or altogether.

Almost every legislature has a consent calendar for bills identified by committee reports as noncontroversial. Each such bill is read at the appointed time and briefly explained, and a vote is taken. Even if only a few votes dissent, the bill is returned to the regular calendar for examination. The consent calendar permits a legislature to dispose of a host of minor bills expeditiously.

As a general practice, the legislative leadership uses a special order to schedule debate, amendment, and passage of a bill at a single session. A bill can be designated for special order by a vote of two-thirds, or more commonly by selection by a priority-setting or policy committee. Bills from appropriations and tax committees might receive automatic special order privileges because of the necessity for their enactment.

Some constitutions, including that of the United States, permit a vote on the final passage of a bill to be oral and unrecorded unless a member calls for the ayes and nays. Ordinarily,

a member is entitled to do this on any motion, including final passage.

Immediately following a vote on final passage, a motion to reconsider can be made. In effect this motion requests another vote on the bill. Although the number of successful reconsiderations is small, the device can facilitate additional compromise to accommodate competing interests on the issue. Generally, only one reconsideration of any vote is allowed, so both sides endeavor to gather switch votes after a close vote. The victorious side attempts to conduct the vote on the reconsideration immediately, so that the losers do not have time to marshal strength. In the U.S. Congress, a motion to reconsider is made routinely after every vote, to give the vote a finality by precluding such a motion at a later time.

In a BICAMERAL legislature, once a bill is passed in one house, the chances for success in the second house are good because the bill has become a product of compromise. There is no concern about wasting time on a bill that can never succeed, because the bill has already cleared the other house. Busy legislators prefer not to repeat debates that have already been extensive in the first house, and they respect the value of cooperation between the two houses.

A single bill must be passed by both houses of a bicameral legislature and be signed by the executive. If the houses pass identical but separate bills, one of the houses must approve the official bill from the other house. The presiding officer and the chief clerical official must verify passage of a bill by signing the official or enrolled copy before the bill is ready for the executive's signature. After the final affirmative vote for passage in the first house, the bill is put into an official engrossment, or formal final copy, and transmitted to the other house for consideration.

Because each house must pass the exact same bill, the form that is passed in the first house can be substituted for a parallel or companion bill in the second house. If the second house accepts the version that is adopted in the first house, it returns the bill with a message to that effect. The first house then enrolls, transcribes, and registers the bill on a roll of bills and submits it to the executive for signature.

If the second house amends the bill, it returns the bill to the first house with a message requesting agreement on the changes. If the amendments are acceptable, a motion is made to concur and to place the bill on repassage. If the motion passes, all the formalities of a final vote are repeated for the bill in its amended form. If repassed the bill is enrolled in its amended form, signed by the legislative officers, and submitted to the executive for signature.

When the two houses cannot agree on a final form for a bill, a complex procedure of compromise is attempted in a conference committee comprising usually three to five members from each house. If the conferees can reach agreement, a conference committee report is filed in both houses that reflects the final changes. Both houses must approve the report, without amendment, for the bill to be passed.

Once the bill is approved by both houses, it is put into final form and transmitted to the executive. If the executive signs the ENROLLED BILL, it is filed with the SECRETARY OF STATE. The enrolled bill is then an act, a written law. Depending on the bill, the act may become effective upon signature of the executive or at some date specified in the bill.

Executive Veto Power

An executive can refuse to sign a bill and can return it to the legislature with a veto message explaining why. The legislature can attempt, first in the house where the bill originated, to override the veto by an extraordinary vote, usually a two-thirds majority.

Governors in a majority of states also have the authority to select particular items from an appropriations bill and individually veto them. This authority, called the line-item veto, became popular because it allowed the executive to cancel specific appropriations items from bills that were hundreds of pages long. Congress enacted the federal line-item veto authority in 1996 (2 U.S.C.A. §§ 691, 692) to give the president the ability to impose cuts on the FEDERAL BUDGET. In *Clinton v. City of New York*, 524 U.S.417, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998), however, the Supreme Court ruled that the Line-Item Veto Act violated the Presentment Clause under Article I of the Constitution. Under the Presentment Clause, after a bill has passed both Houses, but "before it becomes a Law," it must either be approved (signed) or returned (vetoed) by the president. By canceling only parts of the legislation, the president, in

effect, amends the law. The Court concluded that there was no constitutional authorization for the president to amend legislation at his discretion.

The line-item veto, like a regular veto, can be overridden at the state and federal levels by a two-thirds majority vote.

If the executive does not sign a bill or return it to the legislature with a message of disapproval, the bill becomes law within a prescribed number of days. At the state level, the governor turns the bill over to the office of the secretary of state, and the fact that it became law without the governor's signature is noted. If the legislature adjourns before the governor's time for signing expires, the bill does not become law without the signature. The governor's time for consideration has been curtailed, and the adjournment prevents the governor from returning the bill with a veto message. In this case the governor can defeat the bill by refusing to act, which produces a pocket veto.

The veto power gives the executive a pivotal role in the legislative process, if the executive cares to assert his or her authority. Use of the veto power varies considerably, depending on the personality of the executive, the political allegiances of house members and independence of legislative leaders, local customs, and the quality of the work produced by the legislature.

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CROSS REFERENCES

Commissioners on Uniform Laws; Congress of the United States; Engrossed Bill; Enrolled Bill; House of Representatives; Legislative History; Senate.

LEGISLATIVE

Pertaining to the governmental function of lawmaking or to the process of enacting laws.

LEGISLATIVE ACTS

Statutes passed by lawmakers, as opposed to court-made laws.

LEGISLATIVE COUNCIL

Research and support arm of state legislatures and assemblies. Council members research legislative issues, draft legislative proposals, prepare legal opinions, and provide general support services. Also called legislative counsel.

State legislatures depend on research staff to investigate and craft legislative proposals. These staff members are generally grouped into one body called a legislative council, but the terminology varies from state to state. They usually are nonpartisan bodies composed of lawyers and other professionals who work year-round with legislators. Staff members are expected to be politically neutral and impartial on all issues. Individuals may be assigned to general topical research areas or to specific legislative committees.

Legislative council staff members serve on standing committees, create research documents, prepare implementing legislation, draft amendments, prepare reports on proposed administrative rules, and respond to research requests from legislators and legislative staff as well as other governmental agencies and the public. When the legislature is not in session the legislative council focuses on research projects that are of interest to legislators. Councils often publish reports on major issues that are of topical concern. Because federal laws mandate state compliance on a host of topics, legislative councils also must continually review federal regulations to determine their effect on current state laws and pending legislation.

In addition, legislative councils serve as the institutional memories of state legislatures. Long-time staff members with particular expertise in a field are valuable as turnover occurs in legislative bodies. The often arcane procedures involved in drafting bills are usually left to legislative council members, who take legislative ideas and directions and craft them into statutory language. In many states the legislative council is responsible for the publication of the legislative session laws as well as the codified statutes and administrative regulations.

During legislative sessions, council members sit with legislators in committee meetings and

give both private and public advice. As legislation is proposed, these staff members provide analysis as to the policy and budgetary effects these proposals would have on state government. The production of fiscal notes is a major task for council staff, as legislators need to know what impact a new program would have on the state budget in terms of both spending and revenue.

In some states the legislative council is a two-tiered organization. The first tier is composed of a group of legislative leaders (e.g., senators); the second tier consists of the staff. The legislative members of the council set policy and research directions for the staff to follow. The form and function of a legislative council is mandated by individual state statutes.

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LEGISLATIVE COURT

The term *legislative court* was coined in 1828 by Chief Justice JOHN MARSHALL, who wrote the opinion in *American Insurance CO. v. Canter,* 26 U.S. (1 Pet.) 516, 7 L. Ed. 242 (1828). In *Canter,* the High Court ruled that the U.S. Congress had the power to establish a federal court in the U.S. territory of Florida. Marshall held that Congress had this power under Article I, Section 8, Clause 9, of the U.S. Constitution. Marshall called courts created under this provision "legislative courts, created in virtue of the general right of sovereignty, which exists in the government."

On the federal level, the congressional authority to create courts is found in two parts of the U.S. Constitution. Under 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." Article III, Section 1, also provides that the judges in the Supreme Court and in the inferior courts will not have their pay diminished and will hold their office during GOOD BEHAVIOR. This section establishes an independent judiciary that cannot be influenced by threats of pay cuts or of removal without cause. Article III courts are called constitutional courts.

Article I, Section 8, Clause 9, confers on Congress the power to "constitute Tribunals inferior to the supreme Court." This authority is not encumbered by a clause requiring lifetime tenure and pay protection, so judges sitting on Article I courts do not have lifetime tenure, and Congress may reduce their salaries. Article I courts are called legislative courts.

According to the U.S. Supreme Court, under Article I, the Framers of the Constitution intended to give Congress the authority to create a special forum to hear matters concerning congressional powers, and to further the congressional powers over U.S. territories under Article IV, Section 3. This authority allowed the government to create SPECIAL COURTS that can quickly resolve cases that concern the government. This is considered a benefit to society at large because it facilitates the efficient functioning of government.

The distinction between legislative courts and constitutional courts lies in the degree to which those courts are controlled by the legislature. Control of the judiciary by the legislature is forbidden under the separation-of-powers doctrine. This doctrine states that the three branches of government—executive, legislative, and judicial—have separate-but-equal powers. Legislative courts challenge this doctrine because the pay rates and job security of their judges are controlled by a legislature.

The U.S. Supreme Court has identified three situations in which Congress may create legislative courts. First, Congress may create legislative courts in U.S. territories. This is because Congress has an interest in exercising the general powers of government in U.S. territories that do not have their own government. Such legislative courts exist in Guam, the U.S. Virgin Islands, and the Northern Mariana Islands. The local courts of the DISTRICT OF COLUMBIA are also considered legislative courts.

Second, Congress may create legislative courts to hear military cases. This is because Congress has traditionally maintained extraordinary control over military matters. The U.S. Court of Military Appeals is such a legislative court.

Third, Congress may create legislative courts to hear cases involving public rights. Generally,

these are rights that have historically been determined exclusively by the legislative or EXECUTIVE BRANCH. The government is always a party in such cases, and such cases generally involve matters of government administration. On the federal level, the only Article I court established under the public rights doctrine is the U.S. TAX COURT. This court hears cases involving federal taxes, brought by or against the INTERNAL REVENUE SERVICE or another federal agency.

Some scholars maintain that the public rights category of legislative courts could pose a threat to the independence of the federal judiciary. Because Congress is involved in many facets of life, these analysts fear that Congress could create an unacceptable number of courts that are not sufficiently independent. For the most part, that fear has not been realized. Congress has not created an inordinate number of Article I courts, and the U.S. Supreme Court has at times been vigilant in protecting the independence of Article III courts.

In 1982 the U.S. Supreme Court struck down a federal statute on the ground that it gave too much power to a legislative court (*Northern Pipeline Construction Co. v. Marathon Pipe Line Co.,* 458 U.S. 50, 102 S. Ct. 2858, 73 L. Ed. 2d 598). At issue in *Northern Pipeline* was the BANKRUPTCY Reform Act of 1978 (11 U.S.C.A. § 101 et seq.). This act created federal bankruptcy courts to hear bankruptcy cases. Before the act bankruptcy cases were heard by U.S. district courts, which were independent Article III courts. The new bankruptcy judges were given a tenure of 14 years, and their salaries were subject to adjustment. The new bankruptcy courts had the authority to decide contract and tort cases related to bankruptcy.

According to the Supreme Court, the bankruptcy courts had been given the authority to decide issues of private rights, which generally concern the rights of one private party in relation to another private party. Under the Supreme Court's interpretation of Article I, Section 8, Clause 9, legislative courts cannot decide issues of private rights, so the bankruptcy courts were declared unconstitutional.

Two years after the Supreme Court's decision in *Northern Pipeline,* Congress passed the Bankruptcy Amendments and Federal Judgeship Act of 1984 (28 U.S.C.A. § 1408 et seq.). This act created a distinction between core and noncore bankruptcy proceedings. Core proceedings were matters directly related to bankruptcy; noncore proceedings involved ancillary issues such as PERSONAL INJURY and WRONGFUL DEATH claims. Bankruptcy courts maintained jurisdiction in core proceedings. In noncore proceedings bankruptcy courts were limited to proposing findings of fact that could be thoroughly reviewed by a federal district court.

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LEGISLATIVE FACTS

Matters of such general knowledge that they need not be proven to an administrative agency that is deciding a question of policy.

General information and ideas affecting a blanket increase in property valuations are an illustration of legislative facts, as distinguished from individual grounds for the assessment of each parcel of property, which are adjudicative facts—information pertaining to the businesses and activities of parties to administrative proceedings.

LEGISLATIVE HISTORY

Legislative history consists of the discussions and documents, including committee reports, hearings, and floor debates, surrounding and preceding the enactment of a law.

Legislative history includes earlier, similar bills introduced but not passed by the legislature; legislative and executive reports and studies regarding the legislation; transcripts from legislative committee hearings and reports from the committees; and floor debates on the bill.

The legislative history of a statute is a unique form of secondary legal authority. It is not binding on courts in the way that PRIMARY AUTHORITY is. Federal and state constitutions, statutes, CASE LAW (judicial decisions), and agency regulations form the body of primary authority that courts use to resolve disputes.

Internet Sources for Federal Legislative History

GPO Access, http://www.gpoaccess.gov: From 103d Congress (1993) forward

GPO Federal Digital System (FDsys), http://www.gpo.gov/fdsys: From 103d Congress (1993) forward

Thomas (Library of Congress), http://thomas.loc.gov: From 101st Congress (1989) forward

Library of Congress, Bills and Resolutions, http://memory.loc.gov/ammem/amlaw/lwhbsb.html: From 1799 through 1873

GovTrack.us, http://www.govtrack.us: From 103rd Congress (1993) forward

Westlaw, http://www.westlaw.com (subscription access only): Availability varies by database

Lexis, http://www.lexis.com (subscription access only): Availability varies by database

HeinOnline, http://www.heinonline.org (subscription access only): Availability varies by database

LexisNexis Congressional, http://web.lexis-nexis.com/congcomp (subscription access only): Congressional Serial Set dates back to 1789; availability of other documents varies

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As SECONDARY AUTHORITY, legislative history is used only to decipher the precise meaning behind an ambiguous statute or statutory provision.

For example, suppose Congress passes a CRIMINAL LAW requiring that all persons under age 18 who appear in public after sundown must carry a federal identification card, which must be produced for law enforcement officers ON DEMAND. If the statute contains no definition of the phrase "in public," a court faced with a case brought under it may have to consult the legislative history to determine precisely where minors may venture without the identification card.

The value of legislative history in the law is similar to that of academic treatises: Both are extrinsic aids. Lawyers may use favorable language from legislative history and academic treatises when they are presenting arguments to a court, and courts may use it when they are attempting to interpret a statute.

In some countries, such as England, courts may not consider secondary sources in making any decision. In these countries the potential for judicial abuse of a secondary source such as legislative history is considered an unacceptable risk to the legislative and judicial processes. The fear is that a judge could use one particularly unrepresentative statement from a lengthy legislative debate to incorrectly interpret a statute.

North Haven Board of Education v. Bell, 456 U.S. 512, 102 S. Ct. 1912, 72 L. Ed. 2d 299 (1982) illustrates why legislative history is of secondary importance. The question in *Bell* was whether a federal statute, Title IX of the Education Amendments of 1972, 86 Stat. 373, 20 U.S.C.A. §§ 1681 et seq., barred gender-based discrimination in employment by educational institutions. In answering the question in the affirmative, the majority opinion relied heavily on the remarks of Senator Birch Bayh, the sponsor of the legislation. The dissenting opinion relied heavily on remarks by the same senator in reaching a different conclusion.

Not all legislative history in the United States has the same value. Generally, committee reports have the most weight with the judiciary. Remarks of legislators during floor debates have the least value. Committee hearings and reports from the president or governor are given varying weight, according to the court's need for the information.

Legislative history is never the only consideration in a case. In all cases, courts examine the

plain meaning of the words in the statute before looking at legislative history.

The legislative history of federal statutes can be found in the various publications of special legislative commissions and legislative committee hearings and in the *Congressional Record.* The *Congressional Record* is published by Congress each day that Congress is in session. It summarizes the proceedings of the previous day in both the Senate and the House of Representatives. Members of Congress also may publish unspoken remarks and all or part of their floor speeches. Collections of federal legislative history are maintained in law libraries and state government libraries. Thomson/West (formerly West Publishing Company) issues a compilation of the statutes passed in each session of Congress and their legislative history. This compilation, called the *United States Code Congressional and Administrative News,* is available in state government libraries, in law libraries, and on West's online computer service, WESTLAW.

The Internet has become a reliable and useful source for locating legislative history for recent bills and laws. The U.S. Government Printing Office's Website, known as GPO Access, provides the full text of congressional bills, House and Senate committee reports, committee prints, hearing transcripts, the *Congressional Record*, and several other documents. Availability of these documents depends on the individual document, but most are available from the mid-1990s onward. Another useful source is *Thomas: Legislative Information on the Internet,* produced by the LIBRARY OF CONGRESS. It provides access to recent bills, reports, debates, and other information.

During the 2000s several subscription databases added historical legislative documents. For example, WESTLAW users may access the electronic versions of *Statutes at Large* dating back to 1789. Likewise, databases such as LexisNexis Congressional and HeinOnline have scanned thousands of pages of documents and made them available to users of those systems.

Legislative materials on the state level are more difficult to acquire. In most states committee reports and transcripts of floor debates are stored at the state government library at the state capitol for a certain period of time, such as two years. After that period of time, they may be shipped to a state archives office. Some well-stocked law libraries may have history on state legislation. Each state generally provides the text of recent legislation through their Websites, and a growing number provide access to legislative history. However, the amount of information available varies widely from state to state. Moreover, the breadth of state legislative history is small compared with the information available about federal legislation.

The availability of the history of local laws varies from jurisdiction to jurisdiction. Some large cities preserve committee reports and legislative comments on local laws; most small towns leave no trace of the intent behind their laws.

Methods for storing state and local legislative history vary widely. To find the legislative history of a particular state or local statute, people can consult the reference librarian at the appropriate state government library or at a law library.

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CROSS REFERENCES

Canons of Construction; Plain-Meaning Rule; Statute

LEGISLATURE

A legislature is a representative assembly of persons that makes statutory laws for a municipality, state, or nation.

A legislature is the embodiment of the doctrine of popular sovereignty, which recognizes that the people are the source of all political power. Citizens choose by popular vote the legislators, or representatives, whom they want to serve them. The representatives are expected to be sensitive to the needs of their constituents and to represent their constituents' interests in the legislature.

Structure

The federal legislature, the U.S. Congress, is BICAMERAL in structure, meaning that it consists of two chambers, in this case the House of Representatives and the Senate. Each state has a legislature, and all state legislatures have two houses, except the Nebraska Legislature, which has only one. State legislative bodies have various official designations, including *state legislature, general assembly, general court,* and *legislative*

assembly. Local legislatures are generally structured differently from the state and national model. They may be called city councils or boards of aldermen and alderwomen.

The traditional bicameral structure of state and national legislatures developed out of early U.S. societal distinctions between the public in general and the propertied, wealthy class. This structure provided for a lower house and an upper house. The lower-house legislators were elected by the general voting public, and it was believed that their votes were likely to be radical. The upper-house legislators were elected by voters who owned more property, and it was believed that they would be more mindful of concerns to property owners.

Traditional bicameralism is still supported for various reasons. It is believed that because both houses must separately pass a bill in order for the bill to become law, bicameral legislatures are less likely to pass hasty, ill-considered laws or to be subject to public passions. Proponents of unicameralism (a one-chamber system) cite lower costs, simpler procedures, better executive-legislative relationships, and legislative developments that are easier for the public to follow.

Federal and state legislatures range in size from the U.S. Congress, consisting of 535 members, to the Delaware Legislature, with fewer than 100 members. Legislatures organize themselves into a number of committees and subcommittees, which undertake in-depth study of issues within their area of expertise and focus. Each committee addresses the issues presented to it, recommends action, and changes bills before they are passed on for consideration by the full house. After members of one house pass a bill, it must go to the other house for approval. After both houses have approved a bill, it is presented to the president or governor to be signed into law or vetoed.

U.S. state legislatures and the U.S. Congress organize their members according to political party affiliations. The political party that represents the majority of a particular house of the legislature is able to organize and control the actions of that house. The lower house of the legislature chooses a member of the dominant political party to serve as Speaker. The upper house chooses a member of the dominant political party to serve as president. Generally, the members of the different political parties meet separately to determine what actions their party will take in the upcoming session of the legislature. Though there are exceptions, legislators tend to vote along party lines. Political parties are less able to command party loyalty from individual legislators in state legislatures than in the U.S. Congress.

The Texas Legislature gathers in January 2009 for the start of its 81st session. The relationship of state legislatures to state judicial and executive branches is very similar to the relationships among the three federal branches of government.

a BOB DAEMMRICH/ CORBIS.

The Speaker of the lower house is the presiding officer of that house and is generally the most powerful member of the house. The full membership of the house chooses the Speaker. The duties of the Speaker include appointing members of the standing committees in the lower house. The Speaker typically considers party membership, seniority, and the opinions of other party members in making these appointments. Unless there are house rules to the contrary, the Speaker may also refer bills to committee. It is the role of the Speaker to interpret and apply the rules of procedure that govern the actions of the house.

In accordance with the U.S. Constitution, the vice PRESIDENT OF THE UNITED STATES officially presides over the U.S. Senate. Most state constitutions have similar rules, charging the lieutenant governor with the duty of presiding over the state's upper legislative house. In states that do not have a lieutenant governor or do not give that individual power to preside over the upper house of the state legislature, a member of the upper house is selected by other members to serve as president of the house. The duties of the president of the upper house are similar to those of the Speaker of the lower house, although they generally do not include appointing members to committees. Some states that do permit the president of the upper house to

appoint committee members diminish that power by making the appointments subject to approval by the whole membership of the house. In a state in which the lieutenant governor serves as president of the upper house, if there is a tie on a vote in the upper house, the president of the house must cast the deciding vote. In the U.S. Senate and in states in which the lieutenant governor presides over the upper house, the house selects one member to serve as president PRO TEM (for the time being) when the president of the house is absent.

Legislative sessions are the periods of time in which a legislature conducts its business. Each legislative session of the U.S. Congress is called a Congress, lasts for two years, and is numbered consecutively. For example, the 110th Congress began in January of 2007 and ended in December of 2008. The 111th Congress began in January of 2009. Each Congress begins in the year following a biennial election of members and is divided into two one-year sessions. Most states have annual sessions, each lasting perhaps only a few months. The governor of a state may call a special session of the state legislature, outside its normal meeting times, to address issues that require immediate attention.

Qualifications, Terms, and Compensation of Legislators

Members of the U.S. Congress are chosen to represent a particular state. Each state may elect two U.S. senators. The number of U.S. representatives a state may elect is determined by the population of the state, with a minimum of one.

Every state uses a district system to choose its state legislators. Under this system the state is divided into districts, often along county lines, with one or more legislators representing each district.

The applicable national or state constitution sets the qualifications for individuals who are eligible to serve as legislators. These rules are generally not restrictive, including only age, citizenship, and residency requirements. U.S. citizenship is a universal requirement, as is a certain period of state residency. A legislator must live in the state or district from which he or she is elected. Every state requires that members of the lower house of the state legislature be at least 21 years old. The U.S. Constitution requires members of the House of Representatives to be at least 25 years old, and members of the Senate to be at least 30 years old.

Congressional terms are six years for senators and two years for representatives. Terms for state legislators vary, but generally are either two or four years. Over the years there has been a push toward setting term limits in the U.S. Congress—that is, restricting the number of terms a U.S. legislator may serve. State legislatures have a higher rate of turnover and, therefore, do not generally face this issue.

Legislators are compensated for their services at various rates, and many state legislators are considered underpaid. Legislators also receive reimbursement for their expenses, including mileage to and from their home district and the location of the legislature. Legislators usually have the authority, by virtue of powers given to the legislature, to raise their own salaries. But they are often reluctant to do so for fear of a negative public reaction.

Relationship with Executive and Judicial Branches

The purpose of a legislature is to make, alter, amend, and repeal laws. Legislatures are empowered to enact laws by virtue of legislative jurisdiction, which is the authority vested in them by the national or state constitution. The enumerated powers of Congress are provided for in Article I of the U.S. Constitution. In addition to their lawmaking duties, members of Congress also have the power to appropriate funds for government functions, institute taxes, regulate commerce, declare war, raise and support a military, approve presidential appointments, and impeach executive officers. Following the national model, each state legislature derives its powers from the state constitution.

In addition to the legislative branch, national and state governments include executive and judicial branches. The head of the EXECUTIVE BRANCH at the national level is the president of the United States and at the state level is the governor. The executive branch enforces the laws enacted by the legislature. It can do so in a number of ways, including policing the streets and prosecuting those who violate laws.

The judicial branch interprets the laws passed by the legislature. The courts first look to the exact language of a particular law. Sometimes the meaning of the statutory language is not clear to the court, or the application of the language to

the particular case before the court is doubtful. In such a circumstance, the court tries to determine what the legislature intended when it enacted the statute. Legislative intent can often be determined by looking at the history of the particular law and reading committee notes or congressional debates regarding the law. The judicial branch has developed many maxims of statutory interpretation over many years to help the courts carry out legislative intent when interpreting laws.

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CROSS REFERENCES

Congress of the United States; Judicial Review; Legislative History

LEGITIMATE

To make lawful, such as when a child is born prior to the parents' marriage and they subsequently wed and thereby confer upon the child the same legal status as those born in lawful wedlock.

That which is lawful, legal, recognized by law, or in accordance with law, such as legitimate children or legitimate authority; real, valid, or genuine.

CROSS REFERENCE

Illegitimacy.

LEMON LAWS

Laws governing the rights of purchasers of new and used motor vehicles that do not function properly and which have to be returned repeatedly to the dealer for repairs.

Laws in all 50 states and the DISTRICT OF COLUMBIA provide remedies to purchasers of defective new vehicles, often called lemons. These so-called LEMON LAWS protect consumers from substantial defects occurring within a specified period after purchase and provide that a manufacturer must either replace the lemon with a new, comparable car or refund the full purchase price. According to the consumer advocate group Consumers for Auto Reliability and Safety, automakers repurchase 50,000 vehicles a year, about .33 percent of the 15 million vehicles sold annually.

California and Connecticut passed the first lemon laws in 1982, in response to dissatisfaction with remedies in state sales laws and the 1975 federal MAGNUSON-MOSS WARRANTY ACT (15 U.S.C.A. § 2301 et seq.). Magnuson-Moss and other laws previously in effect provided remedies for the breach of full warranties, but the automobile industry typically provided only limited warranties. Other states quickly followed California and Connecticut in an effort to provide relief to new-car buyers under limited warranties.

Lemon laws typically provide CONSUMER PROTECTION for owners of new cars, trucks, and vans. A significant minority of states also provide coverage for leased vehicles. Many states specify coverage for one year from delivery or for the written warranty period, whichever is shorter; a handful of states mandate coverage for the shorter of two years or 24,000 miles.

Lemon laws cover only substantial defects, meaning defects that substantially impair the use, value, or safety of the vehicle. If a defect is safety related, the manufacturer is usually allowed just one chance to fix it before the owner may invoke the lemon law; if a defect impairs the use or value of a vehicle, the manufacturer is usually permitted three or four attempts to repair it. A consumer may also invoke the law if a vehicle is out of service for a certain number of days because of any combination of substantial defects. The time out of service is cumulative, not consecutive, and ranges from 15 to 40 days. Paint defects, rattles, cosmetic flaws, jumpy suspensions, premature wear of the tires, and the like are not normally considered substantial defects.

The purchaser of a new car typically returns to the dealership to have repair work done. Therefore, the dealer knows that a defect exists. However, lemon laws generally require that the purchaser give the manufacturer written notification of a problem within a specific time frame. The manufacturer then has a final opportunity to repair the vehicle before a lawsuit may be commenced. It has been argued that this notice requirement is unduly burdensome for consumers, who are often unaware of it. Consumer advocates have also argued that such notice is redundant. A substantial defect means that the defect would be covered by the automobile's warranty. If a car requires repair for an item covered by warranty, it is done at no cost to the consumer. The manufacturer reimburses the dealer for the warranty repair;

the manufacturer would have notice of the defect when the dealer requests reimbursement from the manufacturer for the repair.

After a consumer invokes the lemon law, the parties arbitrate the matter in an attempt to resolve it. Some statutes provide for a state-run arbitration process. Others provide for arbitration provided by private groups such as the Better Business Bureau or even a manufacturer-sponsored panel. Arbitration is an informal trial with a panel or individual deciding the matter. Each side tells its story. Mechanics might testify on behalf of either side. Lawyers are not required but may increase a consumer's likelihood of prevailing or settling prior to the arbitration hearing.

According to one report, fewer than 10 percent of the cases handled by a manufacturer-sponsored panel are decided in the consumer's favor. Consumers tend to fare slightly better in cases handled by the Better Business Bureau and fare best of all under state-run arbitration procedures. An early 1990s survey of three states with state-run arbitration found that consumers were awarded a full refund or replacement car in at least half of the cases. Many states make the arbitrator's decision binding on the manufacturer but not on the consumer.

During arbitration automakers frequently argue that the consumer abused the car or failed to service the vehicle properly or that the defect does not substantially affect the car's safety or value. For this reason consumers should save all documentation about a vehicle and should keep meticulous records of all service problems. One owner of a top-of-the-line luxury car succeeded in arbitration for a whining noise in the air conditioner because an advertising brochure promised that the car would be a soothing and calming haven.

States vary on whether the manufacturer or the consumer chooses the remedy. A lemon owner is entitled to a refund of the vehicle's purchase price, including SALES TAX, license, and fees, or a new, comparable car—minus a deduction for the value of the owner's use of the lemon. Some states also provide that the manufacturer reimburse the owner's attorney's fees and costs for bringing the lawsuit.

Used-car purchasers must also be wary of lemons. Once a lemon has been repurchased by the manufacturer, either voluntarily or pursuant to an arbitrator's or judge's decision, scant protections prevent its resale elsewhere. States vary greatly on how much information must be disclosed to subsequent purchasers. Some states require the title of a lemon to carry a notation reflecting the lemon status. The notation varies from "nonconforming vehicle" to "defect substantially impairs use, value, or safety." A handful of states require that buyback stickers be placed on the vehicle. However, enforcement of such requirements is often a low priority for state governments, and enforcement of lemon laws effectively ends at a state's border. In response to complaints about resold lemons, in 1996 the FEDERAL TRADE COMMISSION (FTC) began investigating the possibility of imposing a national standard for the resale of lemons. However, the FTC did not take action after completing its inquiry.

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CROSS REFERENCE

Automobiles.

LEND-LEASE ACT

Enacted by Congress in 1941 the LEND-LEASE ACT empowered the president to sell, transfer, lend, or lease war supplies—such as equipment, food, and weapons—to American allies during WORLD WAR II. In exchange for the valuable assistance provided under the Lend-Lease Act (55 Stat. 31 [1941]), the Allies were to comply with the terms set by the president for repayment. The Office of Lend-Lease Administration was created pursuant to the act to oversee the implementation of the program, but this function was later transferred to the STATE DEPARTMENT.

Although the Lend-Lease Act was enacted to provide aid to China and the British Empire, eligibility under its provisions was expanded to include all Allies who were essential to the maintenance of the security of the United States. Subsequent reciprocal agreements with countries where American troops were stationed provided that the troops would receive comparable aid while stationed there. President HARRY TRUMAN ended the lend-lease program in 1945.

LENIN, VLADIMIR ILYICH

Vladimir Ilyich Lenin founded the Russian Communist party and led the 1917 Russian Revolution, which placed the Bolshevik party in charge of the government. The establishment of the Soviet Union can be traced to Lenin's study of revolution and the ruthless imposition of a one-party state based on Lenin's interpretation of Marxism. The Russian Revolution also profoundly affected U.S. society and politics.

Lenin was born Vladimir Ilyich Ulyanov on April 22, 1870, in Simbirsk, a town on the Volga River. The son of a government official, Lenin was a bright student. He entered Kazan University at Kazan in 1887. That same year his brother Alexander Ulyanov was hanged for taking part in an unsuccessful plot to kill Czar Alexander III, of Russia. Lenin was deeply influenced by his brother's actions. Within three months, he was expelled from school for protesting the lack of freedom in the university. He moved to St. Petersburg and entered St. Petersburg University, from which he graduated with a law degree in 1891.

During his academic period, Lenin studied the works of KARL MARX and his political philosophy, Marxism. In 1893 Lenin joined the Social Democratic group, which believed in Marxist principles. A gifted writer and speaker, Lenin soon traveled to Western Europe to meet with other Marxists. He was arrested by the czar's police in 1896 for revolutionary activities and sent into Siberian exile in 1897. During his exile Lenin wrote one of his most important works, *The Development of Capitalism in Russia* (1899).

Lenin was allowed to leave Russia in 1900. He traveled to Germany, where he began writing for a revolutionary newspaper called *Zarya* (Dawn), which was smuggled into Russia. He took the pen name Lenin at this time, hoping to confuse the police. In 1902 he wrote what is considered a masterpiece of revolutionary organization, *What Is to Be Done?* In this work Lenin advocated the use of a highly disciplined party of professional revolutionaries to lead the masses in an uprising against czarist Russia. This revolutionary party would serve as the "vanguard of the proletariat." It would also assume supreme control during this revolutionary period.

Under the Lend-Lease Act, U.S. equipment, food, and weapons were sent to allies during World War II, including these crates of TNT being stacked by British soldiers. CORBIS.

Disputes within Russian revolutionary circles over Lenin's ideas led to a split in 1903 between Lenin's Bolshevik party and the Menshevik party, which favored moderation. Bolsheviks followed Lenin's instructions to commit acts of TERRORISM within Russia. They also worked hard to organize TRADE UNION members and Russian sailors and soldiers.

During most of WORLD WAR I Lenin stayed in Switzerland. When revolution broke out in Russia in March 1917, Lenin returned with the

Vladimir Lenin.

aid of Germany, which hoped he would gain power and agree to a peace treaty. Accused of being a German AGENT by the provisional government, Lenin fled to Finland. He returned to Russia secretly in October 1917 and led the October Revolution, which toppled the provisional government and placed the Bolsheviks in charge.

Once in power Lenin moved quickly to eliminate all political opposition. He organized the Red Army (named after the color of the flag of the world Communist movement). The Red Army fought a CIVIL WAR with the Whites, who opposed one-party and one-man rule by Lenin. The civil war ended in 1922, with the defeat of the White Army. During this period the U.S. government supported the Whites, fearing that the Russian Revolution was a prelude to further Communist revolutions in Europe. This fear seemed confirmed in 1919 when Lenin formed the Communist International to export revolution to the rest of the world.

In 1919 and 1920, U.S. anxiety about the Russian Revolution and the dictatorship of Lenin produced a national hysteria that has come to be known as the first RED SCARE. President WOODROW WILSON's attorney general A. Mitchell Palmer created an antiradicalism unit and appointed J. EDGAR HOOVER to run it. In late 1919 and early 1920, Palmer raided suspected revolutionaries and subversives. Most of these suspects were not U.S. citizens. The largest "Palmer raid" occurred on January 2, 1920, when 6,000 people were arrested. Palmer's agents abused the constitutional rights of these people, searching homes without warrants, holding individuals without giving specific charges, and refusing access to legal counsel. Many aliens were deported because of their radical political views.

Lenin's revolutionary zeal was tempered by the need to defeat the Whites and to establish a national government in the wake of the loss of lives and resources in World War I. Faced with economic ruin, Lenin instituted in March 1921 his New Economic Policy. This policy abandoned many socialist measures and permitted the growth of small businesses. Lenin also tried to get the United States and Europe to invest in the Soviet Union, but was refused because the Soviets had repudiated all foreign debts. The United States did, however, through its Commission for Relief, provide large amounts of food that may have helped save hundreds of thousands of lives.

Lenin's last years were marked by failing health and a concern about the direction of the Communist party and the Soviet Union. He worried about the increasing strength of the political bureaucracy and about Joseph Stalin's plottings to succeed him. In May 1922 he suffered a stroke, then returned to work against his doctor's advice. He suffered additional strokes in November 1922 and March 1923, the last one destroying his ability to speak clearly. Lenin died January 24, 1924, physically unable to appoint his successor. His body was preserved using special chemicals and placed in a tomb on Red Square in Moscow.

FURTHER READINGS

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CROSS REFERENCE

Communism.

LEOPOLD AND LOEB TRIAL

In 1924, the city of Chicago, Illinois, was shocked by the brutal and senseless murder of adolescent Bobby Franks. The crime resulted in a sensational murder trial wherein eminent attorney CLARENCE DARROW achieved a brilliant victory despite an overwhelming amount of incriminating evidence.

Nathan Leopold (*b.* November 19, 1904, in Chicago, Illinois; *d.* August 29, 1971, in San Juan, Puerto Rico), age 19, and Richard Loeb (*b.* June 11, 1905, in Chicago, Illinois; *d.* January 28, 1936, in Joliet, Illinois), age 18, college students from wealthy families, were regarded as unusually intelligent. Their extraordinary reasoning powers compelled them to construct and execute the perfect crime. They decided that kidnapping and murder would challenge their mental capacities to the fullest.

The two young men plotted their crime in 1923. They chose the names Louis Mason and Morton Ballard as aliases and successfully stole a typewriter from the University of Michigan to type a ransom note that would be difficult, if not impossible, to trace. By 1924 they had perfected their plan and accumulated their other necessities, including a chisel and acid.

Leopold and Loeb chose their victim by chance. The ransom note, already typed, had not been addressed to anyone in particular, because the abduction of their victim would be a spontaneous happening. On May 21, 1924, Leopold and Loeb drove around in a rented car near the Harvard School, a private preparatory school in the Kenwood area of Chicago's south side. The first possible victim was a youth named Levinson, who was an acquaintance of the two kidnappers. They drove around the block but lost sight of him. The next student they saw was 14-year-old Bobby Franks. Bobby Franks knew Leopold and Loeb from the neighborhood, and when the two college students offered Bobby a ride home, the boy accepted. Once he was in the car he was bludgeoned to death with a chisel. On the way to dispose of the body, the two killers stopped for something to eat. They then proceeded to a deserted area of Chicago, where they dumped Bobby's body. They buried his clothes and poured acid on his face to hinder positive identification.

Richard Loeb (left) and Nathan Leopold committed a murder that shocked Chicago in the 1920s. They later confessed, but prominent lawyer Clarence Darrow won life sentences rather than the death penalty for both of them.

AP IMAGES

The Franks family was frantic with worry over their missing son. Leopold and Loeb began a ritual of telephone calls promising Bobby's safe return upon receipt of $10,000. A ransom note delivered the next day confirmed this demand.

As Mr. Franks was leaving to deliver the ransom money as directed by the kidnappers, he was notified that his son's body had been found. An extensive police investigation ensued, but Leopold and Loeb had cleverly disposed of all evidence. The two men followed the events of the frustrating investigation and joined in local discussions concerning the case.

There was one flaw in the perfect crime, and that was human frailty. A pair of glasses had

been discovered near the site of the murdered boy's body, and the prescription was traced to Nathan Leopold. Unperturbed, Leopold stated that he had been with his friend Richard Loeb on the day of the murder, and they had spent the day driving around Chicago in the car owned by the Leopold family. The glasses were lost during a day of birdwatching, which Leopold often pursued in conjunction with an ornithology class he was teaching. Because they were seldom used, he had not noticed that the glasses were missing. Leopold's story was feasible, and his upstanding family and educational background added to his credibility; he was released.

More evidence began to emerge against Leopold and Loeb as the investigation continued. A paper typed by Leopold for a class was discovered, and when it was compared to the typewritten ransom note, the type was suspiciously similar. Further investigation revealed that the Leopold family car, which Leopold and Loeb supposedly used the day of the murder, had not left the garage; this information was corroborated by the family chauffeur.

Loeb panicked and confessed, forcing Leopold to do the same. They admitted that they had killed the boy for the excitement of committing a crime.

The case against Leopold and Loeb was airtight. The confessions were authentic, and further evidence was elicited from the two men. The families of the killers appealed to prominent lawyer Clarence Darrow to defend the accused murderers.

Darrow opposed the idea at first, but felt that Leopold and Loeb would be convicted more on an emotional level than on legal expertise. Darrow knew they were guilty but agreed to attempt to secure a sentence other than the applicable death penalty.

The case came to court on July 21, 1924. Darrow requested that the case be decided solely by a judge, without a jury. Judge John R. Caverly consented.

Leopold and Loeb pleaded guilty. They had been examined by psychiatrists and declared legally sane. Darrow decided that since he could not argue that they were insane, he would try to prove that the two men were mentally diseased, which would not excuse their guilt but could be a mitigating factor in their sentencing. Darrow appealed to the mercy of the court in deciding the punishment for Leopold and Loeb.

The judge deliberated for ten days before rendering his decision. Leopold and Loeb were spared the death sentence and received sentences of life imprisonment.

FURTHER READINGS

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LESBIAN RIGHTS

See GAY AND LESBIAN RIGHTS.

LESS DRASTIC MEANS TEST

See LEAST RESTRICTIVE MEANS TEST.

LESSEE

One who rents real property or personal property from another.

A lessee of land is a tenant.

CROSS REFERENCE

Landlord and Tenant.

LESSER INCLUDED OFFENSE

A lesser crime whose elements are encompassed by a greater crime.

A lesser included offense shares some, but not all, of the elements of a greater criminal offense. Therefore, the greater offense cannot be committed without also committing the lesser offense. For example, manslaughter is a lesser included offense of murder, ASSAULT is a lesser included offense of RAPE, and unlawful entry is a lesser included offense of burglary.

The rules of CRIMINAL PROCEDURE permit two or more offenses to be charged together, regardless of whether they are misdemeanors or felonies, provided that the crimes are of a similar character and based on the same act or common plan. This permits prosecutors to

charge the greater offense and the lesser included offense together. Although the offenses can be charged together, the accused cannot be found guilty of both offenses because they are both parts of the same crime (the lesser offense is part of the greater offense).

When a defendant is charged with a greater offense and one or more lesser included offenses, the trial court is generally required to give the jury instructions as to each of the lesser included offenses as well as the greater offense. However, a defendant may waive his or her right to have the jury so instructed. If the jury finds guilt BEYOND A REASONABLE DOUBT as to a lesser included offense, but finds REASONABLE DOUBT as to the defendant's guilt with regard to the greater offense, the court should instruct the jury that it may convict on the lesser charge.

It is not uncommon for a prosecutor and defendant to negotiate an agreement by which the defendant pleads guilty to the lesser included offense either before the trial begins or before the jury returns a verdict. Such a plea negotiation is generally acceptable to the prosecuting attorney because the evidence establishing guilt for the lesser included offense is usually strong. The defendant is generally willing to make such an agreement because the lesser included offense carries a less severe sentence.

The notion of lesser included offenses developed from the common-law doctrine of merger. In the past, felony and misdemeanor trials involved different procedural rights. The merger doctrine determined an individual's procedural rights at trial if the individual was charged with both a felony and a lesser included misdemeanor. In that circumstance the misdemeanor was considered to have merged with the felony, and felony procedural rights applied. The merger doctrine has been repudiated in modern U.S. law because an accused's procedural rights are essentially the same whether the accused is charged with a misdemeanor or a felony.

FURTHER READINGS

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Torcia, Charles E. 1995. *Wharton's Criminal Law.* New York: Clark Boardman Callaghan.

CROSS REFERENCES

Criminal Law; Plea Bargaining.

LESSOR

One who rents real property or personal property to another.

A lessor of land is a landlord.

CROSS REFERENCE

Landlord and Tenant.

LET

To lease certain property.

CROSS REFERENCE

Public Contract.

LETTER OF CREDIT

A written instrument from a bank or merchant in one location that requests that anyone or a specifically named party advance money or items on credit to the party holding or named in the document.

When a LETTER OF CREDIT is used, repayment of the debti s guaranteed by the bank or merchant issuing it. For example, if a bank is aware that a prominent citizen is trustworthy and can safely be relied upon to settle the debts which he or she incurs, then a letter of credit will be offered to that person on the basis of his or her good reputation so the person can travel without carrying large sums of money. Letters of credit were used frequently before credit cards and travelers' checks were in common usage.

LETTER OF THE LAW

The strict and exact force of the language used in a statute, as distinguished from the spirit, general purpose, and policy of the statute.

LETTER RULING

In tax law a written interpretation of certain provisions of federal statutes by the Office of the Assistant Commissioner of the Internal Revenue Service.

Tax laws are often the subject of dispute between U.S. taxpayers and the INTERNAL REVENUE SERVICE (IRS). Authority for interpreting the laws, which are found in the INTERNAL REVENUE CODE, rests with regional IRS agents, who have

A sample irrevocable letter of credit.

ILLUSTRATION BY GGS CREATIVE RESOURCES. REPRODUCED BY PERMISSION OF GALE, A PART OF CENGAGE LEARNING.

Irrevocable Letter of Credit

Date: _____

(Current Commissioner)
Tax Commissioner
Capitol Building, W-300
Charleston, West Virginia 25305

RE: IRREVOCABLE LETTER OF CREDIT NO. _____

Dear Commissioner _____:

We, _____ **(Financial institution)** _____, hereby establish in favor of the State of West Virginia for the use of the Tax Commissioner of the State of West Virginia our Irrevocable Letter of Credit available by draft of the State Tax Commissioner drawn at this Bank at our banking house in _____ **(City)** _____, for sums not exceeding _____ **(Amount)** _____, for the account of _____ **(Taxpayer)** _____, to provide indemnification to the Tax Commissioner adequate to secure compliance with the provisions of Chapter 11 of the West Virginia Code.

1. Hereunder _____ **(Funds)** _____ are available to you, or your successor as Tax Commissioner, by drafts of the Tax Commissioner drawn on us if presented on or before _____ **(Date)** _____. Drafts must be marked "Drawn Under Letter of Credit No. _____, dated _____."

2. Any draft hereunder shall be accompanied by a written certification by the Tax Commissioner that _____ **(Taxpayer)** _____ has failed to comply with the provisions of Chapter 11 of the West Virginia Code, that the Tax Commissioner has given _____ **(Taxpayer)** _____, 15 days written notice by certified mail, return receipt requested, of the default by _____ **(Taxpayer)** _____ in payment of any assessment which has become final and not subject to further appeal, and that _____ **(Taxpayer)** _____, has not cured such default within such fifteen day period.

3. All drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon delivery of documents as specified if presented on or before the current or a future date of expiration.

4. This Letter of Credit shall be automatically extended for additional periods of one year from the present or each future expiration date unless we notify you by certified mail, return receipt requested, at the above address at least thirty (30) days prior to the expiration date of this Letter of Credit that we intend not to extend it for another year (less one day) or to replace it with another similar Letter of Credit, and that following such notice you may immediately draw against this Letter of Credit, notwithstanding the provisions of Paragraph 2.

Very truly yours,

_____
(Financial Institution)

By: _____

WV/BRT-LOC
Rev. 2/97

the power to review tax returns through an audit. If a taxpayer disagrees with an interpretation of the law, she or he may ask the national IRS office to issue a ruling on the point of contention. This statement is called a private LETTER RULING.

Because of the time and expense involved in preparing a request for a letter ruling, such a request is seldom made. The taxpayer must submit a complete record of the transaction in dispute, including a justification for the transaction, all pertinent documents, the section of the tax code in question, and any relevant IRS regulations, rulings, and court precedents.

Letter rulings are issued by the Office of the Assistant Commissioner of the IRS. They are numbered—for example, Private Letter Ruling 8616003. Each discusses the applicable facts before the IRS as well as the IRS ruling, but does not name the individual or organization that requested the ruling. After the ruling is issued to the regional office and the taxpayer, it is published by the IRS. Several thousand letter rulings are issued annually.

The legal value of a letter ruling is extremely limited. The ruling applies only to the taxpayer who requested it and only for the year in which it is issued; federal tax law states that a letter ruling may not be used or cited by another taxpayer (I.R.C. § 6110(j)(3)). If the ruling favors the taxpayer, the regional IRS AGENT is bound by it. If the ruling is adverse, the taxpayer can submit the issue to a tax court.

Since the 1930s courts have refused to give precedential weight to letter rulings. In the 1989 case of *Phi Delta Theta Fraternity v. Commissioner of Internal Revenue,* 887 F.2d 1302 (6th Cir.), a national fraternity appealing an order of the U.S. Tax Court based part of its argument on several letter rulings. In affirming the Tax Court's decision, the appellate court described the weight courts are to give letter rulings: "Although private letter rulings are helpful in determining the contours of tax statutes and may be considered when evaluating the consistency of application of statutes, such letter rulings have no precedential effect."

Despite the limited application of letter rulings, they are widely read by tax attorneys. Specialists use them to keep abreast of IRS interpretation, and the documents are available from electronic databases.

FURTHER READINGS

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Jellum, Linda D. 2008. *Mastering Statutory Interpretation.* Raleigh, NC: Carolina Academic.

Kanter, Burton W., and Sheldon I. Banoff, eds. 1992. "Associate Chief Counsel Speaks Out on Letter Rulings." *Journal of Taxation* 76 (January).

Kaplin, William A., and Barbara A. Lee. 2009. *A Legal Guide for Student Affairs Professionals.* San Francisco: Jossey-Bass.

CROSS REFERENCES

Income Tax; Taxation.

LETTERS OF ADMINISTRATION

A formal document issued by a court of probate appointing a manager of the assets and liabilities of the estate of the deceased in certain situations.

Courts are often asked to rule on the management of a deceased person's estate. Generally, this is a routine matter for probate courts, which are created specifically for this purpose. Individuals generally determine the distribution of their estate in a will, which usually specifies an executor to carry out its directions. But where the decedent has left no will or the executor named in a will is unable or unwilling to serve, the courts must appoint an administrator. This appointment is made by issuing a short document called letters of administration, which is a decree that serves as evidence of the administrator's authority.

When an individual dies intestate (without a valid will or with no will at all), issues must be resolved involving the disposal of the decedent's property, the settlement of debts and claims against the estate, the payment of estate taxes, and in particular the distribution of the estate to heirs who are legally entitled to receive it. These matters are resolved by following the laws of DESCENT AND DISTRIBUTION, which are found in the statutes of all states. Essentially, these laws divide the decedent's property according to well-established rules of inheritance based on blood relations, ADOPTION, or MARRIAGE. In the case of a person who has died intestate, the probate court appoints an administrator to distribute the property according to the relevant descent and distribution statutes.

A sample decree granting letters of administration.

Granting Letters of Administration

SURROGATE'S COURT - COUNTY

CITATION

THE PEOPLE OF THE STATE OF NEW YORK,
by the Grace of God Free and Independent,

TO

A petition having been duly filed by _____, who is domiciled at _____.

YOU ARE HEREBY CITED TO SHOW CAUSE before the Surrogate's Court, _____ County, at _____, New York, on _____, 20____ at _____ o'clock in the _____ noon of that day, why a decree should not be made in the estate of _____, lately domiciled at _____ in the County of _____, New York, granting Letters of Administration upon the estate of the decedent to _____ or to such other person as may be entitled thereto.

(State any further relief requested)

Dated, Attested and Sealed,

_____, 20____

(Seal)

HON.
Surrogate

_____

Chief Clerk

Name of
Attorney for Petitioner _____ Tel. No. _____

Address of Attorney _____

Note: This citation is served upon you as required by law. You are not required to appear. If you fail to appear it will be assumed you do not object to the relief requested. You have a right to have an attorney-at-law appear for you.

[continued]

A sample decree granting letters of administration (continued).

Granting Letters of Administration

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF

_____ X
ADMINISTRATION PROCEEDING
Estate of

NOTICE OF APPLICATION FOR
LETTERS OF ADMINISTRATION
(SCPA 1005)

a/k/a

_____ X
Deceased

File No. _____

Notice is Hereby Given That:

(1) an application for Letters of Administration upon the estate of the above-named decedent, has been made by _____ _____, petitioner, whose post office address is: _____

(2) each and every name of the intestate decedent known to the undersigned is as indicated in the above caption.

(3) petitioner prays that a decree be made directing the issuance of Letters of Administration to _____

(4) the name and post office address of each and every distributee of the above-named decedent, as set forth in the petition and known to the undersigned, are as follows:

(a) Distributees who have been duly cited, have waived citation or have appeared in this proceeding:

Name of Distributee	Domicile and Post Office Address

(b) Other Distributees;

Name of Distributee	Domicile and Post Office Address

(CONTINUE ON REVERSE SIDE IF MORE SPACE NEEDED)

(5) That the undersigned does not know of any other distributees of the said decedent.

(6) That Letters of Administration will issue on or after _____, 20____

Dated: _____, 20____

_____
Signature of Petitioner or Attorney

_____
Attorney for Petitioner

_____
Print Name

_____
Address (Office)

_____
Address

Tel No. _____

[continued]

A sample decree granting letters of administration (continued).

Granting Letters of Administration

COUNTY OF

_____ X

ADMINISTRATION PROCEEDING
Estate of

AFFIDAVIT OF MAILING
NOTICE OF APPLICATION FOR
LETTERS OF ADMINISTRATION
(SCPA 1005)

a/k/a

File No. _____

_____ X
Deceased

STATE OF NEW YORK
COUNTY OF ss.:

_____, residing at _____, New York,

being duly sworn, deposes and says that deponent is over the age of eighteen years; that on _____, 20____, deponent mailed a copy of the foregoing Notice of application for Letters of Administration, contained in a securely closed postpaid wrapper, directed to each of the persons named in paragraph 4(b), respectively, as follows:

whose post office address is _____

whose post office address is _____

whose post office address is _____

whose post office address is _____

whose post office address is _____

whose post office address is _____

whose post office address is _____

whose post office address is _____

whose post office address is _____

by depositing the document in a letter box or other official depository under the exclusive care and custody of the United States Post Office, located at:

_____

Sworn to before me this _____ day of _____, 20_____

_____
Signature

_____
Notary Public
Commission Expires:
(Affix Stamp or Seal)

[continued]

A sample decree granting letters of administration (continued).

Granting Letters of Administration

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF

_____ X
ADMINISTRATION PROCEEDING
Estate of

NOTICE TO CONSUL GENERAL

a/k/a

_____ X
Deceased

File No. _____

TO THE CONSUL GENERAL OF
AT THE CITY OF NEW YORK

PLEASE TAKE NOTICE that a petition (will be) (has been) presented to the Surrogate's Court, County of _____, on _____, 20_____, with respect to the Estate of the above-named decedent and it appears from the petition that:

a. the deceased was a subject of _____ or
b. the following distributees are nonresidents of the United States:

Names	Addresses	Citizenship

_____
Attorney for Petitioner

_____
Address

_____
Telephone No.

STATE OF NEW YORK
COUNTY OF ss.:

_____ being duly sworn, says:

That he/she resides at _____, New York; that on the _____, 20_____, he/she served a copy of the above NOTICE on the Consul General of _____ at _____, New York City, by mailing same to the office of the aforesaid Consul.

_____
Signature

Sworn to before me this _____

day of _____, 20____

_____
Notary Public
Commission Expires:
(Affix Stamp and Seal)

[continued]

A sample decree granting letters of administration (continued).

Granting Letters of Administration

At a Surrogate's Court of the
State of New York Held in and
for the County of _____,
at _____ New York
on _____, 20___

PRESENT:
HON.
Surrogate.

_____ X

ADMINISTRATION PROCEEDING
Estate of

a/k/a

DECREE APPOINTING
ADMINISTRATOR

File No. _____,

_____ X
Deceased

A petition having been filed by _____ praying that administration of the goods, chattels and credits of the above-named decedent be granted to _____; and all persons named in such petition, required to be cited, having been duly cited to show cause why such relief should not be granted or having duly waived the issuance of such citation and consented thereto; and it appearing that _____ is in all respects competent to act as administrator _____ of the estate of said deceased, and a

[ ] bond having been filed and approved in the amount of $_____

[ ] bond having been dispensed with

and such representative(s) otherwise having qualified therefore; now, after due deliberation, with no one appearing in opposition thereto, it is

ORDERED AND DECREED that Letters of Administration issue to

ORDERED AND DECREED, that the authority of such representative(s) be restricted in accordance with, and that letters herein issued contain, the limitation, if any, which appears immediately below.

_____
Surrogate

[continued]

A sample decree granting letters of administration (continued).

Granting Letters of Administration

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF

_____ X
ADMINISTRATION PROCEEDING
Estate of

AFFIDAVIT OF
REGULARITY

a/k/a

File No. _____

_____ X
Deceased

STATE OF NEW YORK
COUNTY OF ss.:

_____, being duly sworn, deposes and says:

1. That he/she is the attorney for _____, the _____ herein.

2. That all the parties to this proceeding have been duly cited or have waived the issuance and service of a citation herein and consented to the entry of a decree or order in the following manner and form:

a. By service of a copy of the citation issued herein upon the following persons in the manner prescribed by SCPA 307(1), as more fully appears by the proof of service thereof, made in the manner and form by law and filed on _____, 20____.

Name Address Date of Service

b. By service pursuant to an order made herein on _____, 20____, under SCPA 307(2), as more fully appears by the proof of service thereof, made in the manner prescribed by law and filed herein on _____, 20____.

Name Address Date of Service
(Parties who waive or consent)

c. By duly executed waivers of the issuance and service of the citation herein and a consent to the entry of a decree or order and filed herein on _____, 20_____, by:

Name Address Date of Service

3. That no notice of appearance has been filed herein, except by _____
4. That all of the persons named above are of full age and are of sound mind, excepting those hereinbefore stated to be otherwise, and comprise all the parties, as deponent verily believes, who have any interest in this proceeding.

_____
Signature

Sworn to before me this _____
day of _____, 20 _____

_____
Notary Public
Commission Expires:
(Affix Stamp and Seal)

N.B. Where a person cited is an infant, incarcerated, a mentally ill person, a mentally retarded person, a developmentally disabled person, an alcohol abuser or for any cause is mentally incapable of adequately protecting his/her rights, it must so appear in the foregoing affidavit. The age of the infant also must be stated.

[continued]

A sample decree granting letters of administration (continued).

Granting Letters of Administration

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF

_____ X
ADMINISTRATION PROCEEDING
Estate of

WAIVER OF CITATION, RENUNCIATION AND CONSENT TO APPOINTMENT OF ADMINISTRATOR (INDIVIDUAL)

a/k/a

File No. _____

_____ X
Deceased

The undersigned, a distributee or creditor of the above named decedent and being of full age and sound mind hereby voluntarily appears in the Surrogate's Court of _____ County, New York and waives the issuance and service of citation in this matter, renounces all right to Letters of Administration of the above captioned estate and consents that

[ ] Letters of Administration
[ ] Letters of Administration with Limitations
[ ] Limited Letters of Administration

be issued to _____
or any other person or persons entitled thereto without any notice whatsoever to the undersigned, and consents

[ ] that a bond be dispensed with
[ ] that a bond in the amount of $_____ be posted and hereby specifically release any claim I might have under any bond that may be filed.

_____ _____ _____ _____
Date **Signature** **Street Address** **Relationship**

_____ _____
Print Name **Town/State/Zip**

STATE OF NEW YORK
COUNTY OF SS.:

On _____, 20____, before me personally appeared _____

_____
to me known and known to me to be the person described in and who executed the foregoing waiver and consent and each duly acknowledged the execution thereof.

_____ _____
Notary Public **Name of Attorney**
Commission Expires: _____
(Affix Stamp and Seal) **Address**

_____

_____
Telephone No.

[continued]

A sample decree granting letters of administration (continued).

Granting Letters of Administration

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF

_____ X

ADMINISTRATION PROCEEDING
Estate of

WAIVER OF CITATION, RENUNCIATION AND CONSENT TO APPOINTMENT OF ADMINISTRATOR (CORPORATION)

a/k/a

_____ X

Deceased

File No. _____

The undersigned corporation, a creditor of the above-named decedent, hereby voluntarily appears in the Surrogate's Court of _____ County, New York, and waives the issuance and service of a citation in this matter and consents that Letters of Administration be issued to _____

or any other person or persons entitled thereto without any notice whatsoever to the undersigned, without furnishing a bond or other security for the faithful performance of the duties of that office and specifically releasing any claim it might have under any bond that may be furnished.

Dated: _____, 20_____

_____
(Name of Corporation)

By: _____
(Signature of Officer)

_____
(Type Name and Title)

STATE OF NEW YORK
COUNTY OF ss.:

On _____, 20_____, before me personally came _____

to me known, who being duly sworn did say that: he resides at _____

_____ ; he is a _____

_____ of _____

_____ , the corporation described in and which executed the foregoing waiver and consent; and that he signed the same thereto by order of the board of directors of the corporation.

Notary Public
Commission Expires:
(Affix Stamp and Seal)

Name of Attorney _____

Address _____

Telephone Number _____

[continued]

A sample decree granting letters of administration (continued).

ILLUSTRATION BY GGS CREATIVE RESOURCES. REPRODUCED BY PERMISSION OF GALE, A PART OF CENGAGE LEARNING.

Granting Letters of Administration

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF

Note: File Proof of Service at least 3 days before return date. State clearly date, time and place of service and name of person served (Uniform Rule 207.7(c)).

_____ X
ADMINISTRATION PROCEEDING
Estate of

AFIDAVIT OF SERVICE
OF CITATION (Adult)

a/k/a

File No. _____

_____ X
Deceased

STATE OF NEW YORK: COUNTY OF ss.:

_____ of _____

_____, being duly sworn, says that I am over the age of eighteen years; that I made personal service of the citation herein dated _____, 20_____ on each person named below, each of whom deponent knew to be the person mentioned and described in said citation, by delivering to and leaving with each of them personally a true copy of said citation, as follows:

On _____, description, viz: sex _____, color of skin _____, color of hair _____, approximate age _____, weight _____, height _____, at _____ o'clock _____ m. on the _____ day of _____, 20_____, at _____

On _____, description, viz: sex _____, color of skin _____, color of hair _____, approximate age _____, weight _____, height _____, at _____ o'clock _____ m. on the _____ day of _____, 20_____, at _____

On _____, description, viz: sex _____, color of skin _____, color of hair _____, approximate age _____, weight _____, height _____, at _____ o'clock _____ m. on the _____ day of _____, 20_____, at _____

That none of the aforesaid persons is in the Military Service as defined by the Act of Congress known as the "Soldiers' and Sailors' Civil Relief Act of 1940" and in the New York "Soldiers's and Sailors Civil Relief Act."

Sworn to before me this _____ day of _____, 20 _____

_____

Notary Public
Commission Expires:
(Affix Stamp and Seal)

Even though a decedent may leave a valid will that names an executor, there is no guarantee that the executor will carry out the duties involved. An executor may be unable or unwilling to serve, for example, because of illness or other commitments. For this reason wills often name an alternate executor as a safeguard. When the named executor cannot or

will not serve and there is no alternate executor, the court will intervene to appoint an administrator. Generally, one or more relatives of a decedent will submit their name in a petition for letters of administration, and the court will rule on each submitter's fitness for the duty and on the merits of competing claims, if any.

Until the court can appoint someone with full responsibility for the estate, it may choose to appoint a temporary special administrator. This individual is granted limited authority over specified property of the decedent, as opposed to having the authority to direct the disposition of the entire estate. When a valid will exists, any administrator appointed by the court is bound to direct the estate according to the terms of the will.

CROSS REFERENCE

Executors and Administrators.

LETTERS PATENT

An instrument issued by a government that conveys a right or title to a private individual or organization, including conveyances of land and inventions.

Although Article I, Section 8, Clause 8, of the U.S. Constitution confers upon Congress the power to secure to authors and inventors the exclusive right to their respective writings and discoveries, this constitutional clause is not self-executing. Rather, formal application for letters patent must first be made in the manner prescribed by statute (35 U.S.C.) and regulations (37 C.F.R.) promulgated pursuant thereto.

LETTERS ROGATORY

A formal written request made by one judicial body to another court in a different, independent jurisdiction that a witness who resides in that jurisdiction be examined through the use of interrogatories accompanying the request.

A device used in international law by which the courts of one country ask the courts of another to utilize their procedure to assist the country making the request in the administration of justice within its borders.

The use of letters rogatory can be traced to early American LEGAL HISTORY when they facilitated cooperation between the courts of the several states of the Union. Their continued use is based primarily upon the comity (courtesy and respect) of courts toward each other. Rule 28 of the Federal Rules of CIVIL PROCEDURE provides for letters rogatory to be used in federal courts to obtain the testimony of a witness who resides in a foreign country through a number of different discovery devices. The Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (28 U.S.C.A. § 1781 [1948]) sets out the procedures to be followed in the use of letters rogatory by the countries who are parties to the treaty.

Letters rogatory can be sent to a court in a sister state or to a court or judge in a foreign country. Granting the request, again, is a matter of comity between courts.

CROSS REFERENCE

Civil Procedure.

LETTERS TESTAMENTARY

The formal instrument of authority and appointment granted by the proper court to an executor (one designated in a will to manage the estate of the deceased) empowering that person to execute the functions of the office.

LEVEES AND FLOOD CONTROL

The system constructed and maintained by government to prevent the overflow of water.

A levee is an embankment constructed by the states along a body of water to prevent the flooding of lands adjacent to the water. The federal government also has power, by virtue of the COMMERCE CLAUSE, to prevent and control flooding, since flood control protects NAVIGABLE WATERS.

As a general rule, the power to construct or establish levees is vested in public authorities and not in individuals. Levee districts are the public agencies most frequently involved in the creation of flood control projects for the purpose of constructing and maintaining flood control improvements for the protection of the general public. The state legislature has power to create levee districts. Subject to constitutional limitations, a tax can be imposed for levees and for general flood control improvements. A state legislature can levy, assess, and tax directly, or it can delegate the power to local levee districts. Generally, only property which is benefited by the flood control project can be subject to a tax assessment.

CROSS REFERENCE

Rivers.

A sample letters testamentary.

Letters Testamentary

Filing Fee Paid $ _____

_____ Certs $ _____

$_____ Bond, Fee: _____

Receipt No: _____ No: _____

DO NOT LEAVE ANY ITEMS BLANK

SURROGATE'S COURT OF THE STATE OF NEW YORK

COUNTY OF _____

_____ X

ADMINISTRATION PROCEEDING,
Estate of

a/k/a

_____ X

DECEASED

PETITION FOR LETTERS OF:

[ ] Administration

[ ] Limited Administration

[ ] Administration with Limitations

[ ] Temporary Administration

File No. _____

TO THE SURROGATE'S COURT, COUNTY OF

It is respectfully alleged:

1. The name, domicile and interest in this proceeding of the petitioner, who is of full age, is as follows:

Name: _____

Domicile: _____
(Street Address) (City/Town/Village)

_____
(State) (Zip) (Telephone Number)

Mailing address is: _____
(if different from domicile)

Citizenship (check one): [ ] U.S.A. [ ] Other (specify) _____

Interest of Petitioner (check one):

[ ] Distributee of decedent (state relationship)

[ ] Other (specify) _____

Is proposed Administrator an attorney: [ ] Yes [ ] No [If yes, submit statement pursuant to 22 NYCRR 207.16(e); see also 207.52 (Accounting of attorney-fiduciary).]

2. The name, domicile, date and place of death, and national citizenship of the above-named decedent are as follows: [**The Death Certificate must be filed with this proceeding.** If the decedent's domicile is different from that shown on the death certificate, check box [ ] and attach an affidavit explaining the reason for this inconsistency.]

Name: _____

Domicile: _____
(Street Number) (City/Town/Village)

_____
(State) (Zip Code)

Township of: _____ County of: _____

Date of Death: _____ Place of Death: _____

Citizenship: (check one): [ ] U.S.A. [ ] Other (specify)

[Note: For Items 3a through c: Do not include any assets that are jointly held, held in trust for another, or have a named beneficiary.]

3. (a) The estimated gross value of the decedent's personal property passing by intestacy is less than

$ _____

(b) The estimated gross value of the decedent's real property, in this state, which is [ ] improved, [ ] unimproved, passing by intestacy is less than S _____

A brief description of each parcel is as follows:

[continued]

A sample letters testamentary (continued).

Letters Testamentary

(c) The estimated gross rent for a period of eighteen (18) months is the sum of $_____

(d) In addition to the value of the personal property stated in paragraph (3) the following right of action existed on behalf of the decedent and survived his/her death, or is granted to the administrator of the decedent by special provision of law, and it is impractical to give a bond sufficient to cover the probable amount to be recovered therein: **[Write "NONE" or state briefly the cause of action and the person against whom it exists, including names and carrier].**

(e) If decedent is survived by a spouse and a parent, or parents but no issue, and there is a claim for wrongful death, check here [ ] and furnish name(s) and address(es) of parent(s) in Paragraph 7. See EPTL 5-4.4.

4. A diligent search and inquiry, including a search of any safe deposit box, has been made for a will of the decedent and none has been found. Petitioner(s) (has) (have) been unable to obtain any information concerning any will of the decedent and therefore allege(s), upon information and belief, that the decedent died without leaving any last will.

5. A search of the records of this Court shows that no application has ever been made for letters of administration upon the estate of the decedent or for the probate of a will of the decedent, and your petitioner is informed and verily believes that no such application ever has been made to the Surrogate's Court of any other county of this state.

6. The decedent left surviving the following who would inherit his/her estate pursuant to EPTL 4-1.1 and 4-1.2:

a. [ ] Spouse (husband/wife).

b. [ ] Child or children or descedents of predeceased child or children. **[Must include marital, nonmarital and adopted].**

c. [ ] Any issue of the decedent adopted by persons related to the decedent (DRL Section 117).

d. [ ] Mother/Father.

e. [ ] Sisters or brothers, either of whole or half blood, and issue of predeceased sisters or brothers.

f. [ ] Grandmother/Grandfather.

g. [ ] Aunts or uncles, and children of predeceased aunts and uncles (first cousins).

h. [ ] First cousins one removed (children of first cousins).

[Information is required only as to those classes of surviving relatives who would take the property of descedent pursuant to EPTL 4-1.1. State **"number"** of survivors in each class. Insert **"No"** in all prior classes. Insert **"X"** in all subsequent classes].

7. The decedent left surviving the following distributees, or other necessary parties, whose names, degrees of relationship, domiciles post office address and citizenship are as follows:

[Note: Show clearly how each person is related to decedent. If relationship is through an ancestor who is deceased, give name, date of death, and relationship of the ancestor to the decedent. Use rider sheet if space in paragraph (7) is not sufficient. See Uniform Rules 207.16(b).

If any person listed in paragraph (7) is a nonmarital person, or descended from a nonmarital person, attach a copy of the order of filiation or Schedule A. If any person listed in paragraph (7) was adopted by any persons related by blood or marriage to decedent or descended from such persons, attach Schedule B.]

7a. The following are of full age and under no disability: [If nonmarital or adopted-out person, so indicate by attaching Schedule A and/or B]

Name	Relationship	Domicile and Mailing Address	Citizenship

7b. The following are infants and/or persons under disability: [Attach applicable Schedule A, B, C, and/or D]

Name	Relationship	Domicile and Mailing Address	Citizenship

8. There are no outstanding debts or funeral expenses, except: [Write "NONE" or state same]

[continued]

A sample letters testamentary (continued).

Letters Testamentary

9. There are no other persons interested in this proceeding other than those hereinbefore mentioned.

WHEREFORE, your petitioner respectfully prays that: [Check and complete all relief requested]

( ) a. process issue to all necessary parties to show cause why letters should not be issued as requested;

( ) b. an order be granted dispensing with service of process upon those persons named in paragraph (7) who have a right to letters prior or equal to that of the person nominated, and who are non-domiciliaries or whose names or whereabouts are unknown and cannot be ascertained;

( ) c. a decree award Letters of:

[ ] Administration to _____

[ ] Limited Administration to _____

[ ] Administration with Limitation to _____

[ ] Temporary Administration to _____

or to such other person or persons having a prior right as may be entitled thereto, and;

( ) d. That the authority of the representative under the foregoing Letters be limited with respect to the prosecution or enforcement of a cause of action on behalf of the estate, as follows: the administrator(s) may not enforce a judgement or receive any funds without further order of the Surrogate.

( ) e. That the authority of the representative under the foregoing Letters be limited as follows:

( ) f. [State any other relief requested.]

Dated: _____

1. _____
(Signature of Petitioner)

_____
(Print Name)

2. _____
(Signature of Petitioner)

_____
(Print Name)

A-1 (12/98)

A sample letters testamentary (continued).

Letters Testamentary

STATE OF NEW YORK)
) SS:
COUNTY OF)

COMBINED VERIFICATION, OATH AND DESIGNATION
[For use when petitioner is to be appointed administrator]

I, the undersigned the petitioner named in the foregoing petition, being duly sworn, say:

1. VERIFICATION: I have read the foregoing petition subscribed by me and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

2. OATH OF ADMINISTRATOR as indicated above: I am over eighteen (18) years of age and a citizen of the United States; and I will well, faithfully and honestly discharge the duties of Administrator of the goods, chattels and credits of said decedent according to law. I am not ineligible to receive letters and will duly account for all moneys and other property that will come into my hands.

3. DESIGNATION OF CLERK FOR SERVICE OF PROCESS: I do hereby designate the Clerk of the Surrogate's Court of _____ County, and his/her successor in office, as a person on whom service of any process, issuing from such Surrogate's Court may be made in like manner and with like effect as if it were served personally upon me, whenever I cannot be found and served within the State of New York after due diligence used.

My domicile is: _____
(Street/Number) (City, Village/Town) (State) (Zip)

_____
Signature of Petitioner

On the _____ day of _____, 20_____, before me personally came

_____

to me known to be the person described in and who executed the foregoing instrument. Such person duly swore to such instrument before me and duly acknowledged that he/she executed the same.

_____
Notary Public
Commission Expires:
(Affix Notary Stamp or Seal)

Signature of Attorney: _____

Print Name: _____

Firm Name: _____ Tel. No. _____

Address of Attorney: _____

A sample letters testamentary (continued).

Letters Testamentary

File # _____

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF

_____ X

PROCEEDING FOR
Estate of

a/k/a

_____ X
DECEASED

SCHEDULE A
NONMARITAL PERSONS
(PERSONS BORN OUT OF WEDLOCK)

[NOTE: Nonmarital children (or their issue) who would be distributees if they (or their ancestors) were born in wedlock will not be regarded as distributees unless satisfactory proof is submitted establishing paternity]. See EPTL 4-1.2 which sets forth methods of establishing paternity.

Name of alleged distributee: _____

Date of birth: _____ Relationship to decedent: _____

Name of father: _____

Name of mother: _____

Does the birth certificate contain the father's name? Yes [ ] No [ ]
If yes, attach copy of birth certificate.

Has an order of filiation establishing paternity been entered?
[ ] Yes No [ ] If yes, attach copy of order.

Did the nonmarital person live with his or her father? Yes [ ] No [ ]

If yes, give dates and places of residence: _____

_____

_____

Letters Testamentary

File # _____

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF

_____ X

PROCEEDING FOR
Estate of

a/k/a

_____ X
DECEASED

SCHEDULE B
ISSUE OF THE DECEDENT
WHO WERE THE SUBJECT
OF AN ADOPTION

Name of child: _____

Relationship to decedent prior to adoption: _____

Date of adoption: _____

Was this a step-parent adoption? (i.e., was the child adopted by the spouse of the decedent's former spouse?)

Yes [ ] No [ ]

If yes, name of adoptive father or mother: _____

If not a step-parent adoption, indicate below the biological relationship of the adoptive parent to the child:

[ ] grandparent(s)

[ ] brother or sister

[ ] aunt or uncle

[ ] first cousin

[ ] nephew or niece

Name of the adoptive parent: _____

A sample letters testamentary (continued).

A sample letters testamentary (continued).

Letters Testamentary

File# _____

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF

_____ X

PROCEEDING FOR
Estate of

SCHEDULE C
INFANTS

a/k/a

_____ X
DECEASED

[NOTE: Please furnish all of the information requested, otherwise the petition may be rejected.]

Name: _____ Date of birth: _____

Relationship to the decedent: _____

With whom does the infant reside? _____

Name of mother: _____ Is she alive? _____

Name of father: _____ Is he alive? _____

Does infant have a court-appointed guardian? Yes [ ] No [ ]

If yes, name and address of guardian: _____

Name: _____ Date of birth: _____

Relationship to the decedent: _____

With whom does the infant reside? _____

Name of mother: _____ Is she alive? _____

Name of father: _____ Is he alive? _____

Does infant have a court-appointed guardian? Yes [ ] No [ ]

If yes, name and address of guardian: _____

Letters Testamentary

File# _____

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF

_____ X

PROCEEDING FOR
Estate of

a/k/a

_____ X
DECEASED

SCHEDULE D
PERSONS UNDER DISABILITY
OTHER THAN INFANTS

[use additional sheets if more than one]

1. Name:_____ Relationship: _____

Residence: _____

With whom does this person reside? _____

If this person is in prison, name of prison: _____

Does this person have a court-appointed fiduciary? Yes [ ] No [ ]

If yes, give name, title and address: _____

_____

If no, describe nature of disability: _____

_____

If no, give name and address of relative or friend interested in his or her welfare: _____

_____

2. Whereabouts unknown/Unknowns [persons whose addresses or names are unknown to petitioner; if known, give name and relationship to decedent]

A sample letters testamentary (continued).

ILLUSTRATION BY GGS CREATIVE RESOURCES. REPRODUCED BY PERMISSION OF GALE, A PART OF CENGAGE LEARNING.

LEVERAGE

A method of financing an investment by which an investor pays only a small percentage of the purchase price in cash, with the balance supplemented by borrowed funds, in order to generate a greater rate of return than would be produced by paying primarily cash for the investment; the economic benefit gained by such financing.

Real estate syndicates and promoters commonly use leverage financing. A leveraged investor builds up equity or ownership in the investment by making payments on the amount of principal borrowed from a third person. The money allotted to the repayment of interest charged on the borrowed principal is treated typically as a deduction that reduces TAXABLE INCOME. The greater the amount of principal borrowed, the larger the interest payments and the resulting deductions. Obviously, a taxpayer who pays cash is not entitled to deductions for interest payments. In many cases, deductions for the depreciation of thecapital asset constituting the investment are also permitted.

Any investor receives an anticipated rate of return from the investment although the rate may fluctuate depending upon the economic climate and the management of the investment. Because of the favorable tax treatment enjoyed as a result of this method of financing, the leveraged investor keeps more of the income generated by the investment than an investor who financed the investment mainly through cash. There is, however, risk involved in leverage financing. If the income generated by the investment decreases, there might not be adequate funds available to meet payment of the outstanding principal and interest, leading to substantial losses for the investor.

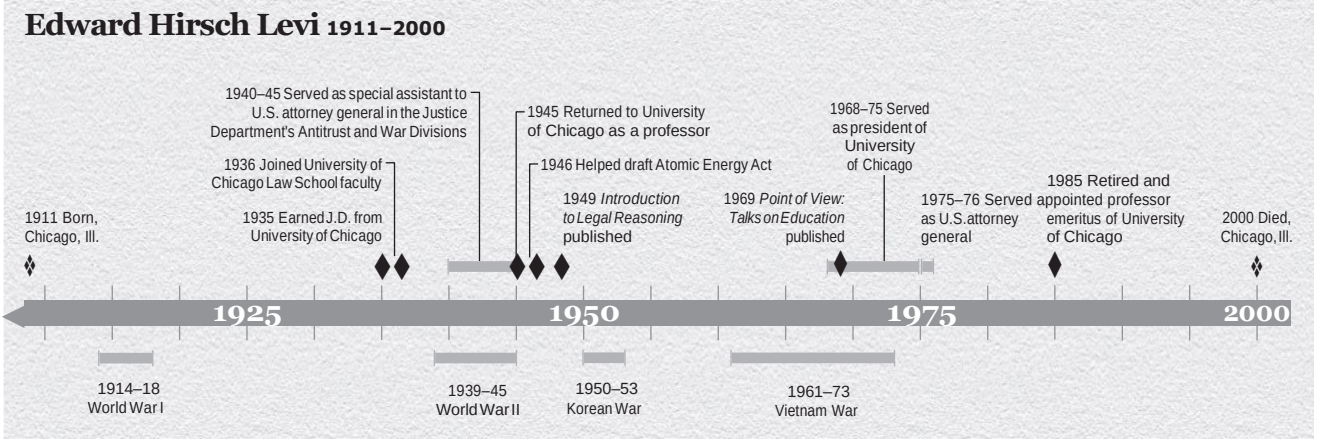
v LEVI, EDWARD HIRSCH

Edward Hirsch Levi served as U.S. attorney general from 1975 to 1976. A prominent and respected lawyer, scholar, and teacher, Levi became attorney general following the WATERGATE scandals and the resignation of President RICHARD M. NIXON. Levi helped to restore respect and public confidence in the JUSTICE DEPARTMENT, which had become deeply politicized during the Nixon administration.

Levi was born June 26, 1911, in Chicago. He graduated from the University of Chicago in 1932 and earned a law degree there in 1935. He was a Sterling Fellow at Yale University in 1935 and 1936, and received a degree of Doctor of Juristic Science (J.S.D.) from Yale in 1938.

Levi was named an assistant professor of law at the University of Chicago in 1936, the year he was admitted to the Illinois bar. From 1940 to 1945, he took a leave of absence from the university to serve as a special assistant to the U.S. attorney general. During that period, he served in the Antitrust and War Divisions and was chairman of the Interdepartmental Committee on Monopolies and Cartels. His time in government service helped to make him an expert on ANTITRUST LAW.

Levi returned to the University of Chicago Law School in 1945 as a professor. In 1949 he published *Introduction to Legal Reasoning,* a classic work of legal education



that has been used by thousands of students. He was named dean of the law school in 1950 and provost of the university in 1962, and was appointed president of the university in 1968.

During those years, Levi remained an active participant in government. He was an adviser and counsel to the Federation of Atomic Scientists and in 1946 helped draft the Atomic Energy Act (60 Stat. 755 [42 U.S.C.A. §§ 2011 et seq.]), which led to the establishment of the Atomic Energy Commission. In 1950 he was appointed chief counsel to the Subcommittee on Monopoly Power of the House Judiciary Committee. In that position, he conducted hearings on monopolistic practices in the steel and newsprint industries. During the administration of President LYNDON B. JOHNSON, Levi was a member of the White House Central Group on Domestic Affairs and of the White House Task Force on Education.

In February 1975 President GERALD R. FORD appointed Levi as attorney general of the United States. Ford had assumed the presidency after Nixon's resignation on August 9, 1974, in the wake of the WATERGATE scandal. The scandal initially revolved around Nixon's role in covering up a break-in and electronic bugging of Democratic National Committee headquarters in the Watergate office building complex in Washington, D.C. But investigations soon revealed that Nixon had used the FEDERAL BUREAU OF INVESTIGATION (FBI), INTERNAL REVENUE SERVICE, and CENTRAL INTELLIGENCE AGENCY to pursue his political enemies. During that period, the DEPARTMENT OF JUSTICE came under heavy attack. It appeared that the department either was aiding in the cover-up or that it was incompetent in pursuing the truth.

The appointment of Levi restored confidence in the department. Because of his impeccable credentials and lack of partisanship, Levi was able to restore morale to the shaken organization and to institute internal reforms that might prevent future scandals. He did this, in part, by issuing policies that restricted the FBI's ability to be exploited for political investigations.

Following JIMMY CARTER'S defeat of Ford in the 1976 presidential election, Levi returned to the University of Chicago as a professor of law. He retired from full-time teaching in 1985 and was appointed professor emeritus. Levi died on March 7, 2000 in Chicago.

Edward H. Levi.
AP IMAGES

THE BASIC PATTERN OF LEGAL REASONING IS REASONING BY EXAMPLE ... IN WHICH A PROPOSITION DESCRIPTIVE IN THE FIRST CASE IS MADE INTO A RULE OF LAW AND THEN APPLIED TO A NEXT SIMILAR SITUATION. A METHOD ... NECESSARY FOR THE LAW, BUT [WITH] CHARACTERISTICS WHICH UNDER OTHER CIRCUMSTANCES MIGHT BE CONSIDERED IMPERFECTIONS.
—EDWARD H. LEVI

FURTHER READINGS

"Edward Hirsch Levi." 2009. Attorneys General of the U.S., 1789–Present. *U.S. Department of Justice.* Available online at http://www.usdoj.gov/ag/aghistory/levi_e.html; website home page: http://www.usdoj.gov (accessed September 6, 2009).

"The Legacy of Edward Levi; Legendary Former AG Helped Restore Justice Department's Credibility after Watergate." 2000. *Legal Times* 23 (March 13).

Sonnenschein, Hugo F. 2000. "In Memoriam: Edward H. Levi (1912–2000)." *Univ. of Chicago Law Review* 67 (fall).

LEVY

To assess; raise; execute; exact; tax; collect; gather; take up; seize. Thus, to levy a tax; to levy a NUISANCE*; to levy a fine; to levy war; to levy an execution, i.e., to levy or collect a sum of money on an execution.*

A seizure. The obtaining of money by legal process through seizure and sale of property; the raising of the money for which an execution has been issued.

A sheriff or other officer of the law can be ordered by a court to make a levy against any property not entitled to an exemption. The

court can do this with an order of attachment, by which the court takes custody of the property during pending litigation, or by execution, the process used to enforce a judgment. The order directs the sheriff to take and safely keep all non-exempt property of the defendant found within the county or as much property as is necessary to satisfy the plaintiff's demand plus costs and expenses. The order also directs the sheriff to make a written statement of efforts and to return it to the clerk of the court where the action is pending. This report, called a return, lists all the property seized and the date of seizure.

The sheriff's act in taking custody of the defendant's property is the levy. A levy on real property is generally accomplished by giving the defendant and the general public notice that the defendant's property has been encumbered by the court order. This can be done by filing a notice with the clerk who keeps real estate mortgages and deeds recorded with the county. A levy of tangible PERSONAL PROPERTY usually requires actual seizure. If the goods are capable of being moved around, most states insist that the sheriff actually take them into custody or remove them to another place for safekeeping with an independent person. If the property is bulky or cumbersome and removal would be impracticable and expensive, actual seizure is not necessary. The levy can be accomplished by removing an essential piece, such as the pinsetter in a bowling alley, or by services of the court demanding preservation of the property. The order can be served on the defendant or anyone else in possession of the property, and disobedience of it then can be punished as a contempt of court.

Often the order will permit levy against any property belonging to the defendant, but it will specify seizure of a unique item and allow something else of comparable value to be substituted only if the unusual item cannot be found.

An attempt to attach a debtor's property is effective only after a levy, and from that time on there is a lien on the attached property. This gives the plaintiff some security that he or she will be able to collect what is owed and, if first in time, establishes the plaintiff's priority at the head of the line of the defendant's creditors who might subsequently seek a levy upon a debtor's property. It can strengthen the plaintiff's bargaining position if the plaintiff is trying to settle the dispute with the defendant, and it may even create jurisdiction for the court over the defendant, but only to the extent of the value of the property subject to levy.

LEWDNESS

Behavior that is deemed morally impure or unacceptable in a sexual sense; open and public indecency tending to corrupt the morals of the community; gross or wanton indecency in sexual relations.

An important element of lewdness is openness. Lewdness is sometimes used interchangeably with LICENTIOUSNESS or LASCIVIOUSNESS, which both relate to debauchery and MORAL TURPITUDE. It is a specific offense in certain state statutes and is included in general provisions in others.

v LEWIS, JOHN ROBERT

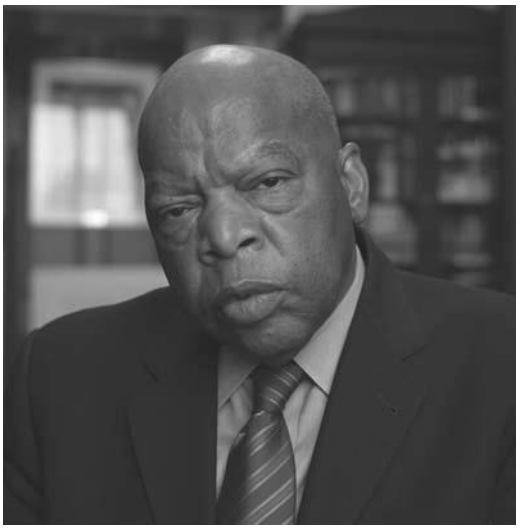
John Robert Lewis first achieved national attention while he was chairman of the STUDENT NONVIOLENT COORDINATING COMMITTEE (SNCC) during the 1960s and was elected to the U.S. House of Representatives in 1986. Lewis was born on February 21, 1940, to Willie Mae and Eddie Lewis in Troy, Alabama.

While he was a teenager, Lewis felt the call to the Christian ministry and began to preach periodically in local churches. He listened regularly to a radio Gospel program presented by a young, Boston-trained theologian, MARTIN LUTHER KING JR. and was inspired because King, a Southern, African American man, was intelligent, articulate, and interesting. King also had thoughtful ideas about addressing the problems of racial injustice through passive resistance. When Lewis was age 15, he learned of the Montgomery, Alabama, bus boycott led by King, RALPH DAVID ABERNATHY, and other members of the Montgomery Improvement Association (MIA). The MIA led the vast majority of the African-Americans in the city in their decision to refuse to ride the segregated city buses unless they were treated more fairly by white drivers and passengers. It filled Lewis with pride to see the African American community of Montgomery acting in concert and with determination. After a year-long

struggle, the bus company agreed to their demands.

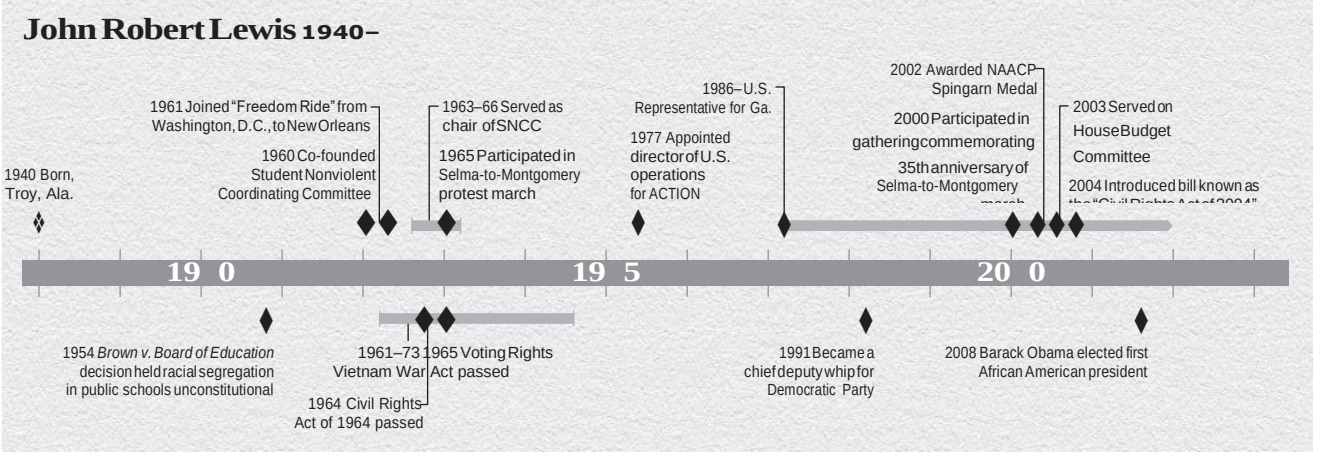
Lewis was kept from actively participating in CIVIL RIGHTS agitation for a while by his parents, who were frightened for his life. But in 1960, after four students from North Carolina A&T College in Greensboro sat down in the "whites only" section of the local Woolworth's lunch counter and refused to move, hundreds of African American and white students all over the South followed their example. Although Lewis's parents urged him to remain uninvolved, he joined the lunch counter sit-in demonstrations that were taking place in Nashville. Before the federal Civil Rights Act of 1964 was passed, Lewis had been jailed and beaten many times and had suffered a fractured skull at the hands of an angry, white mob in Selma, Alabama, during the 1965 Selma-to-Montgomery PROTEST march.

Because of the spontaneity of the sit-ins, the students had no organizational body or any general affiliation with existing civil rights groups. ELLA BAKER, the executive secretary of the SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE (SCLC, King's regional organization), called a meeting at Shaw University in Raleigh, North Carolina, in April 1960. The students refused to affiliate with any of the existing major civil rights groups such as the SCLC, the National Association for the Advancement of Colored People (NAACP), or the Congress on Racial Equality (CORE), and formed their own organization. There, with Lewis as a co-founder, along with about 200 other students, SNCC was formed.



John Lewis.
AP IMAGES

After a 1961 U.S. Supreme Court decision declaring illegal all SEGREGATION in interstate bus depots and on buses, CORE leaders decided to stage a "freedom ride" from Washington, D.C., to New Orleans. Led by CORE director James Farmer, seven African American and six white freedom riders left Washington, D.C., on May 4, 1961. Lewis was among them. The riders, who had pledged themselves to nonviolence, were brutally beaten during the ride. Lewis was the first to be attacked. Finally, when the Greyhound bus that some of the demonstrators were riding in was burned outside of Anniston, Alabama, the CORE volunteers were ready to discontinue their protest. SNCC members—including Lewis—refused to be dissuaded. Lewis also led marches against segregated movie theaters in Nashville, again prompting



numerous arrests as well as physical and verbal abuse by local whites. Through it all, Lewis maintained a path of nonviolence toward achieving civil rights.

Lewis was unanimously elected chairperson of SNCC in 1963 and served until 1966, when STOKELY CARMICHAEL, the proponent of the more aggressive "Black Power!" strategy, won his seat. During the time that he was chairman, Lewis was one of the speakers during the August 28, 1963, March on Washington, when nearly 250,000 people converged on the U.S. capital to stage a peaceful protest for freedom and fairness in hiring practices. After he was ousted as SNCC chairman, Lewis went on to work for the Field Foundation. One of his most significant roles there was as director of its Voter Education Project. From 1970 through 1977 Lewis led grass-roots efforts to organize Southern African-American voters and to educate the youth politically. In 1977 President JIMMY CARTER appointed Lewis to be director of U.S. operations for ACTION, a federal agency overseeing economic recovery programs at the community level.

IF WE ARE EVER TO MOVE TOWARD A COLORBLIND SOCIETY, ONE AMERICA, ONE SOCIETY, ONE FAMILY, ONE PEOPLE—WE MUST HAVE POLICIES THAT PROMOTE AND ENCOURAGE DIVERSITY.
—JOHN LEWIS

In 1982 Lewis was elected to Atlanta City Council, where he was known for his close attention to the needs of the poor and the elderly. Twenty years after he stepped down as the leader of SNCC, Lewis was elected to the U.S. House of Representatives after a hard-fought battle with his former SNCC co-worker, Georgia state senator JULIAN BOND. Although, as a congressman, critics accused him of not adapting his positions to the changing needs of African-Americans, he nonetheless remained a voice calling for a "sense of shared purpose, of basic morality that speaks to blacks and whites alike." In 1991 Lewis became one of the three chief deputy whips for the DEMOCRATIC PARTY, one of the most influential positions in the House. His criticism of House speaker Newt Gingrich brought him to the forefront of controversy in 1996, although many African Americans considered him to be a moderate. In 1994, during a speech to African Leaders in Ghana, Lewis summed up his experience and his commitment to civil rights for all peoples: "Do not give up, do not give out, and do not give in. We must hold on, and we must not get lost in a sea of despair."

In 1998 Lewis published his autobiography: *Walking with the Wind: A Memoir of the Movement.* In 2000 he participated in a gathering in Selma, Alabama, commemorating the 35th anniversary of the Selma-to-Montgomery protest march.

In 2003 Lewis was a member of the House Budget Committee, and served on the Subcommittee on Health that is part of the House Ways and Means Committee. He was also Senior Chief Deputy Democratic Whip in the 108th Congress, as well as a member of the Democratic Steering Committee, the Congressional Black Caucus, and the Congressional Committee to Support Writers and Journalists. Lewis additionally served as co-chair of the Faith and Politics Institute.

Lewis has been the recipient of numerous and awards and honors, including the National Constitution Center's "We the People" Award, the NAACP's Spingarn Medal, and the National Education Association's Martin Luther King Jr. Memorial Award. In March 2003 Lewis led a group of fellow representatives and other politicians on a "Civil Rights Pilgrimage," a tour of significant sites in Birmingham, Montgomery, and Selma, Alabama. The purpose of the tour was to acquaint political leaders with the history of the CIVIL RIGHTS MOVEMENT and to encourage dialogue on the topics of race and civil rights in the United States.

In 2004 Lewis introduced a bill dubbed the "Civil Rights Act of 2004" by other congressmen. He noted in a press release in 2004 that the work of the civil rights movement is "far from done," adding that "There are doors that remain unopened and some that have slammed even harder shut." On August 28, 2008, Lewis, speaking on the final night of the Democratic National Convention, called BARACK OBAMA'S presidential nomination "a testament" to Martin Luther King's vision. Later that year, Lewis was re-elected to Congress in the 5th District of Georgia.

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LEX

[Latin, Law.] *In medieval jurisprudence, a body or collection of various laws peculiar to a given nation or people; not a code in the modern sense, but an aggregation or collection of laws not codified or systematized. Also, a similar collection of laws relating to a general subject, and not peculiar to any one people.*

In modern U.S. and English jurisprudence this term signifies a system or body of laws, written or unwritten, applicable to a particular case or question regarded as local or unique to a particular state, country, or jurisdiction.

LEX FORI

[Latin, The law of the forum, or court.] *The positive law of the state, nation, or jurisdiction within which a lawsuit is instituted or remedy sought.*

The *lex fori,* or law of the jurisdiction in which relief is pursued, governs all procedural matters as distinguished from substantive rights.

LEX LOCI

[Latin, The law of the place.] *The law of the state or the nation where the matter in litigation transpired.*

The term *lex loci* can be employed in several descriptions, but, in general, it is used only for *lex loci contractus* (the law of the place where the contract was made), which is usually the law that governs the contract.

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LIABILITY

A comprehensive legal term that describes the condition of being actually or potentially subject to a legal obligation.

Joint *liability* is an obligation for which more than one person is responsible.

JOINT AND SEVERAL LIABILITY refers to the status of those who are responsible together as one unit as well as individually for their conduct. The person who has been harmed can institute a lawsuit and recover from any or all of the wrongdoers—but cannot receive double compensation, for instance, the full amount of recovery from each of two wrongdoers.

Primary liability is an obligation for which a person is directly responsible; it is distinguished from *secondary liability* which is the responsibility of another if the party directly responsible fails or refuses to satisfy his or her obligation.

LIBEL AND SLANDER

Two torts that involve the communication of false information about a person, a group, or an entity such as a corporation. Libel is any defamation that can be seen, such as a writing, printing, effigy, movie, or statue. Slander is any defamation that is spoken and heard.

Collectively known as "defamation," libel and slander are civil wrongs that harm a reputation; decrease respect, regard, or confidence; or induce disparaging, hostile, or disagreeable opinions or feelings against an individual or entity. The injury to one's good name or reputation is affected through written or spoken words or visual images. The laws governing these torts are identical.

To recover in a libel or slander suit, the plaintiff must show evidence of four elements: that the defendant conveyed a defamatory message; that the material was published, meaning that it was conveyed to someone other than the plaintiff; that the plaintiff could be identified as the person referred to in the defamatory material; and that the plaintiff suffered some injury to his or her reputation as a result of the communication.

To prove that the material was defamatory, the plaintiff must show that at least one other person who saw or heard it understood it as having defamatory meaning. It is necessary to show not that all who heard or read the statement understood it to be defamatory, but only that one person other than the plaintiff did so. Therefore, even if the defendant contends that the communication was a joke, if one person other than the plaintiff took it seriously, the communication is considered defamatory.

Defamatory matter is published when it is communicated to someone other than the plaintiff. This can be done in several different ways. The defendant might loudly accuse the plaintiff of something in a public place where others are present, or make defamatory statements about the plaintiff in a newsletter or an online bulletin board. The defamation need not be printed or distributed. However, if the defendant does not intend it to be conveyed to anyone other than the plaintiff, and conveys it in a manner that ordinarily would prevent others from seeing or hearing it, the requirement of publication has not been satisfied, even if a THIRD PARTY inadvertently overhears or witnesses the communication.

Liability for republication of a defamatory statement is the same as for original publication, provided that the defendant had knowledge of the contents of the statement. Thus, newspapers, magazines, and broadcasters are liable for republication of libel or slander because they have editorial control over their communications. In contrast, bookstores, libraries, and other distributors of material are liable for republication only if they know, or had reason to know, that the statement is defamatory. Common carriers such as telephone companies are not liable for defamatory material that they convey, even if they know that it is defamatory, unless they know, or have reason to know, that the sender does not have a privilege to communicate the material. Suppliers of communications equipment are never liable for defamatory material that is transmitted through the equipment they provide.

In general, there are four defenses to libel or slander: truth, consent, accident, and privilege. The fact that the allegedly defamatory communication is essentially true is usually an absolute defense; the defendant need not verify every detail of the communication, as long as its substance can be established. If the plaintiff consented to publication of the defamatory material, recovery is barred. Accidental publication of a defamatory statement does not constitute publication. Privilege confers immunity on a small number of defendants who are directly involved in the furtherance of the public's business—for example, attorneys,

judges, jurors, and witnesses whose statements are protected on PUBLIC POLICY grounds.

Before 1964 defamation law was determined on a state-by-state basis, with courts applying the local COMMON LAW. Questions of FREEDOM OF SPEECH were generally found to be irrelevant to libel or slander cases, and defendants were held strictly liable even if they had no idea that the communication was false or defamatory, or if they had exercised reasonable caution in ascertaining its truthfulness. But the Court changed the direction of the law with its decision in *New York Times v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964).

For the first time, the Court placed some libelous speech under the protection of the FIRST AMENDMENT. The plaintiff, a police official, had claimed that false allegations about him had been published in the *New York Times,* and he sued the newspaper for libel. The Court balanced the plaintiff's interest in preserving his reputation against the public's interest in freedom of expression in the area of political debate. The Court wrote that "libel can claim no talismanic immunity from constitutional limitations. It must be measured by standards that satisfy the First Amendment." Therefore, in order to protect the free flow of ideas in the political arena, the law requires that a public official who alleges libel must prove actual malice in order to recover damages. The First Amendment protects open and robust debate on public issues even when such debate includes "vehement, caustic, unpleasantly sharp attacks on government and public officials."

Since *Sullivan,* a public official or other person who has voluntarily assumed a position in the public eye must prove that a libelous statement "was made with 'actual malice—that is, with knowledge that it was false or with reckless disregard to whether it was false or not" (*Sullivan*). The actual-malice standard does not require any ill will on the part of the defendant. Rather, it merely requires the defendant to be aware that the statement is false or very likely false. Reckless disregard is present if the plaintiff can show that the defendant had "serious doubts as to the truth of [the] publication" (see *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 111 S. Ct. 2419, 115 L. Ed. 2d 447 (1991)).

Since the Court's decision in *Sullivan,* the question of who is a public official has been raised often. In *Rosenblatt v. Baer,* 383 U.S. 75, 86 S. Ct. 669, 15 L. Ed. 2d 597 (1966), the Court found that non-elected officials "who have, or appear to have, substantial responsibility for, or control over, the conduct of public affairs" are public officials within the meaning of *Sullivan.* The Court said that the employee's position must be one that would invite public scrutiny and discussion of the person holding it, entirely apart from the scrutiny and discussion arising out of the allegedly libelous communication. The Court emphasized that a person's status as a "public official" will not be determined by state laws defining that term, because those definitions are usually developed for "local administrative purposes, not for the purposes of a national constitutional protection." Instead, the Court ruled that the determination of whether a public employee is a "public official" will be made on the facts of each case in light of all the relevant First Amendment jurisprudence.

Courts have struggled to apply this standard in a consistent manner. For example, in *Hinerman v. Daily Gazette Co.* 188 W. Va. 157, 423 S.E.2d 560 (1992), the West Virginia Supreme Court of Appeals concluded that the plaintiff, who was a member of the State Racing Commission, a municipal judge, and a member of the State Bar's Board of Governors and subsequently its VICE PRESIDENT, was not a "public official" under *Sullivan.* The court did acknowledge that the plaintiff enjoyed some degree of authority in his various positions. However, the court stressed that he was not an elected official, and in his roles as an unelected official, the plaintiff did not exercise "substantial control" over the governmental functions giving rise to the lawsuit. In another case, however, the Supreme Court of Alaska found that a private doctor who had contracted to provide medical services to five jails was a "public official" under the First Amendment, even though he performed that role in a part-time capacity and was not highly visible in the community (*Green v. Northern Pub. Co., Inc.*, 655 P.2d 736 [1982]).

Since 1985, courts have tried to clarify this area of law by establishing criteria to help them determine whether non-elected government employees are "public officials" for First Amendment purposes. These criteria include: (1) the employee's remuneration (the higher the compensation, the more likely "public official" status will be found); (2) the employee's role in making decisions on public issues (the more authority the employee wields, the more likely "public

The Public Figure Doctrine: An Unworkable Concept?

The "public figure" doctrine announced by the Supreme Court in *Curtis Publishing v. Butts,* 388 U.S. 130, 87 S. Ct. 1975, 18 L. Ed. 2d 1094 (1967), held that prominent public persons had to prove actual malice (knowledge of falsity or reckless disregard of whether a statement is true or false) on the part of the news media in order to prevail in a libel lawsuit. Prior to *Butts* only public officials had to prove actual malice. In the years since this decision, the PUBLIC FIGURE doctrine has proved a troublesome area of the law, primarily because it is difficult to apply with any consistency. Some, generally from the news media, have called for making it easier to classify a person as a public figure. Others believe that a strict line must be maintained between public and private figures, so as to prevent the damaging of personal reputations by the media. Both sides agree that greater clarity is needed in defining what constitutes a public figure.

Those who favor a less restrictive definition of public figure argue that FREEDOM OF THE PRESS requires such a definition. It is in the PUBLIC INTEREST to encourage the reporting of news without fear that the subject of a story will sue the news organization for libel. Without adequate safeguards news editors may resort to self-censorship to avoid the possibility of a lawsuit. In a democratic society, self-censorship would prove to be a damaging restriction on the public's right to information.

For these advocates the Supreme Court's decision in *Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974), signified a step away from the protections of the FIRST AMENDMENT. The Court held that a person who "voluntarily injects himself or is drawn into a particular public controversy" becomes a public figure "for a limited range of issues." The Court also held that there are persons who "occupy positions of such persuasive power and influence that they are deemed public figures for all purposes." This category would include, for example, a national labor or CIVIL RIGHTS leader.

Critics of *Gertz* argue that these two categories make little sense and are of no help to a court in determining whether a person is a public figure. For example, should a Hollywood entertainer or a professional athlete be cast as a public person in a libel suit? Do these persons have "persuasive power and influence"? As for persons who become involved in public events, courts have been unable to articulate a consistent standard for measuring whether a person "thrust" himself or herself into the status of a public figure. Studies have revealed contradictory ways of applying the *Gertz* standard.

Some commentators have advocated abandoning *Gertz* and replacing it with a "subject matter" test. Under this test if an article or story involves PUBLIC POLICY or

official" status will be found); (3) the impact of the governmental position on everyday life (the greater the impact, the more likely "public official" status will be found); and (4) the potential for social harm caused by someone occupying the position (the more harm that may be caused, the more likely "public official" status will be found).

Eventually, *Sullivan*'s actual-malice requirement was extended to include plaintiffs who are not government officials of any kind, elected or unelected. In the companion cases of *Curtis Publishing Co. v. Butts* and *Associated Press v. Walker,* 388 U.S. 130, 87 S. Ct. 1975, 18 L. Ed. 2d 1094 (1967), the Court held that a football coach at the University of Georgia and a retired Army general were similar to public officials in that they enjoyed a high degree of prominence and access to the mass media that allowed them to influence policy and to counter criticisms leveled against them.

In *Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974), the Court expanded its definition of "public figure" to include anyone who has invited public scrutiny by thrusting themselves into the public eye. The Court recognized two types of public figures: those who are "public figures for all purposes" and those who are public figures for limited purposes. For an individual to be considered a PUBLIC FIGURE in all situations, the person's name must be so familiar as to be a household word—for example, Oprah Winfrey or David Letterman. A limited-purpose public figure is one who voluntarily injects himself or herself into a public controversy and becomes a public figure for a limited range of issues. Limited-purpose public figures have at least temporary access to the means to counteract false statements about them. By voluntarily placing themselves in the public eye, they relinquish some of their privacy rights. For

the functioning of government, it should be protected by the public figure doctrine. Therefore, if a story discusses a relatively unknown person's divorce proceeding or supposed Communist political leanings, this would be a matter of public policy (divorce law or political parties) that invokes the actual-malice standard in a libel suit.

The use of subject matter analysis would give public figures more protection than they currently have under *Gertz.* A story about the private life of an entertainer or professional athlete would generally not involve a public issue under even the broadest definition. Under the subject matter test, the celebrity would not be forced to prove actual malice.

Defenders of the *Gertz* decision admit that the public figure concept has been difficult to apply, but argue that the subject matter test is not a good alternative. They note that although freedom of the press is an important value, the need to protect the reputation of private citizens is also an important societal value. Citizens are encouraged to participate in public affairs, yet a liberal reading of the public figure doctrine could discourage participation if there is no redress for injury to reputation. In addition, private citizens who are deemed public figures could never match the news media's power and pervasiveness in telling one side of the story.

Even with the difficulties inherent in *Gertz,* defenders note that it narrowed the public figure category in ways that protect the public. Simply appearing in the newspapers in connection with some newsworthy story or stories does not make one a public figure. Forced involvement in a public trial does not by itself make one a public figure. Most important, those charged with libel cannot create their own defense by converting a private citizen into a public figure solely by virtue of their news coverage.

Defenders of *Gertz* are leery of the subject matter test. They contend this test is too one-sided in favor of the news media. Almost any topic in human affairs can be generalized into a public policy issue or one that involves the government. It would be unfair to allow a publication to falsely brand a relatively unknown person a Communist and then assert the person is a public figure because radical political parties are a matter of public concern. The victim of this charge would have a difficult time proving actual malice to win a libel suit.

Those who favor a restrictive definition of the public figure doctrine also note that a libel action serves as a private means of controlling irresponsible journalism. *Gertz,* even with its difficulties in application, has allowed private persons a better chance of success in libel suits, which in turn sends a strong message to the media to be more careful in their reporting. As to the concerns about self-censorship, defenders of *Gertz* point out that journalists make choices every day about what is published. Falsely tarnishing the reputation of a person should be the object of self-censorship in professional news-gathering organizations.

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these reasons, false statements about limited-purpose public figures that relate to the public controversies in which they are involved are not considered defamatory unless they meet the actual-malice test set forth in *Sullivan.*

Determining when someone has voluntarily injected themselves into the public eye such that they forfeit some of their privacy rights has not been easy for courts. For example, courts typically rule that individuals do not make themselves public figures simply by filing for divorce. *Gettner v. Fitzgerald,* 677 S.E.2d 149 (Ga. App. 2009). This is true, courts have ruled, even when one spouse is a well-known professor at a religious university, and both spouses are publicly active on social issues. *Maguire v. Journal Sentinel, Inc.*, 232 Wis.2d 236, 605 N.W.2d 881 (1999). However, if a divorce includes allegations of spousal abuse in a MARRIAGE involving at least one famous person, those facts might be enough for a court to find that the divorce proceedings are of "genuine social concern," thereby converting the plaintiff-spouse into a public figure under the First Amendment. *Huggins v. Moore* 94 N.Y.2d 296, 726 N.E.2d 456 (1999).

A 1991 case made it somewhat easier for public figures to sue for libel. *Masson v. New Yorker Magazine,* 501 U.S. 496, 111 S. Ct. 2419, 115 L. Ed. 2d 447 (1991), held that a plaintiff alleging libel satisfies the actual-malice standard if it can be proved that the author deliberately altered the plaintiff's words and that the alteration resulted in a material change in the meaning conveyed by the plaintiff in the original statement. Jeffrey M. Masson, a prominent psychoanalyst, had sued Janet Malcolm, the author of an article and book about him, as well as *The New Yorker* magazine and Alfred A. Knopf, Inc., which had published the article and book, respectively. Masson claimed that

Richard Jewell and the Olympic Park Bombing

The strange ordeal of Richard Jewell grew out of the 1996 Summer Olympics bombing. One of thousands of security guards hired for the Atlanta games, Jewell discovered a suspicious knapsack containing a bomb on July 27, 1996. Before it exploded, he helped lead an evacuation that limited casualties to two dead and more than one hundred wounded. His heroism was widely praised. But within three days, celebrity turned into notoriety as the FBI had made him a primary suspect.

Suspicious of the 11 interviews Jewell granted following the bombing, the FBI theorized that he might have planted the bomb in order to be seen as a hero. This theory was promptly leaked to the press, which made it a cause célébre. The *Atlanta Journal-Constitution* published an extra edition on July 30, with a headline that read "FBI Suspects 'Hero' May Have Planted Bomb." The allegations mounted: Jewell had reportedly sought publicity for his heroism, while persons at Piedmont College, his former employer, were said to have made allegations to the FBI about his character and conduct. On NBC's nightly news program, Tom Brokaw stated that the FBI "probably" had enough evidence to arrest and try Jewell.

The investigation lasted three months. During this time Jewell became the target of two lawsuits by bombing survivors, which were later dismissed. He maintained his innocence and tried to clear his name by pointing out that he had not approached the news media seeking attention, a fact which was quickly confirmed. Only on October 26, 1996, did the FBI finally clear him as a suspect. He appeared at a press conference where he declared that he had spent 88 days living in fear. Nearly a year later, after initially refusing, Attorney General Janet Reno formally apologized to Jewell.

After being cleared in the fall of 1996, Jewell sued or threatened suit against several media companies for defamation. They included ABC, NBC, CNN, the *New York Post,* NBC anchor Tom Brokaw, and a local Georgia radio station. Initially, he was successful. In December 1996, NBC negotiated a settlement with Jewell for a reported $500,000. CNN and ABC settled, too, as did Piedmont College, which Jewell had sued for allegedly supplying false information.

The most controversial lawsuit was filed in January 1997 against the *Atlanta Journal-Constitution* and its parent company, Cox Enterprises Inc. Although truth is the key defense in a defamation case and Jewell *was* a suspect in the bombing, the libel action was based on more than just a statement of his status as a suspect. Listing 19 allegedly libelous headlines and excerpts from articles, the suit claimed that the newspaper libeled him "in a series

B

quotations that were attributed to him in those publications were false and libelous. Malcolm conceded that she had altered quotations in order to make the finished product more readable, but she maintained that the essence of Masson's words had not been changed. The Court held that quotation marks around a passage "indicate to the reader that the passage reproduces the speaker's words verbatim." It was careful to protect journalistic freedom and went on to write that deliberate alteration of quotations does not automatically prove actual malice:

> We conclude that a deliberate alteration of the words uttered by a plaintiff does not equate with knowledge of falsity for purposes of *New York Times Co. v. Sullivan* ... and *Gertz v. Robert Welch, Inc.* ... unless the alteration results in a material change in the meaning conveyed by the statement. The use of quotations to attribute words not in fact spoken bears in a most important way on that inquiry, but it is not dispositive in every case.

The tremendous growth of electronic communications networks since the 1990s has raised numerous questions about liability for defamation. Suddenly, it is possible to commit libel and to communicate a libelous statement to thousands of people, instantly. When libel is perpetrated in cyberspace, who is responsible?

of false and defamatory articles that portrayed him as an individual with a bizarre employment history and an aberrant personality who was likely guilty" (*Jewell v. Cox Enterprises Inc*).

But early on, an unusual ruling went against the plaintiff. Fulton County state court judge John R. Mather ruled on October 5, 1999, that Jewell was a "public figure" for purposes of his legal burden in the defamation case. Mather determined that Jewell made himself a public figure through his extensive media interviews following the bombing.

Unexpected and far-reaching, the ruling put a huge obstacle before the plaintiff. As the U.S. Supreme Court made clear in its oft-cited 1964 ruling in New York Times v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d. 686 (1964), there is a distinction in defamation cases between private individuals and public figures. Private individuals have the easier task. As a private individual, Jewell would simply need to prove that the newspaper acted with negligence or carelessness in reporting information that was false and defamatory in content. But in order for a *public* figure to prevail, the plaintiff must prove "actual malice" on the part of the media defendants. Meeting the test for actual malice requires showing that the defendants knew that the reported information was false or had a reckless disregard for the truth.

Faced with meeting this significantly higher burden of proof, Jewell appealed the ruling unsuccessfully. In October 2001 the state Court of Appeals upheld the lower court, *Atlanta Journal-Constitution v. Jewell*, 555 S.E.2d 175 (Ga. Ct. App. 2001), and a year later appeals were turned down by both the Supreme Court of Georgia and the U.S. Supreme Court. As the lawsuit moved toward trial in 2003, Lin Wood, his attorney, warned that the decision to hold Jewell a public figure "threatens the reputations of any private citizen who is discussed by a member of the media" (The Associated Press. October 07, 2002. "Supreme Court Sends Several First Amendment Cases Packing"). The newspaper's attorney Peter Canfield observed that Jewell had already admitted to being the focus of the FBI investigation about which the paper had reported.

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B

Are online information providers considered publishers, distributors, or common carriers? What level of First Amendment protection should be afforded to defamatory statements transmitted electronically?

In *Cubby, Inc. v. CompuServe,* 776 F. Supp. 135 (S.D.N.Y. 1991), the plaintiff sued CompuServe, an online service company, for libel because of statements that had appeared in a newsletter written and uploaded by an independent company and transmitted through CompuServe's network. The federal district court found that CompuServe had no editorial control over the contents of the newsletter and that it was therefore only a distributor of the newsletter. CompuServe could not be held liable for the newsletter's contents unless it had known, or had had reason to know, that the newsletter contained defamatory statements. Conversely, in *Stratton Oakmont v. Prodigy Services Co.,* 63 U.S.L.W. 2765, 23 Media L. Rep. 1794, 1995 WL 323710 (N.Y. Sup. Ct. 1995); *reh'g denied,* 24 Media L. Rep. 1126 (N.Y. Sup. Ct. 1995), the court found that Prodigy, an online provider similar to CompuServe, was a publisher rather than a distributor, and that it was liable for the

defamatory material in question because it exercised considerable editorial control over what appeared on its system.

Some states have laws that seek to protect vital industries and businesses from unfounded rumors and scare tactics. Such was the case in Texas, which enacted food- and business-disparagement laws that allow victims of false statements about their perishable food or business to sue for damages. Television host Oprah Winfrey was ensnared in litigation involving these laws after she broadcast an episode of her show in 1996 about the problems surrounding the outbreak of mad cow disease in Great Britain. The episode, which was labeled "dangerous food," included a guest who suggested that unless the U.S. banned certain practices, a mad cow disease epidemic in the U.S. would "make AIDS look like the common cold." Beginning the day of the broadcast, the price of beef dropped drastically and remained low for two weeks. The Texas Beef Group filed a civil lawsuit against Winfrey, her company, and the guest, alleging that comments made on the program had violated Texas's disparagement laws. The judge dismissed the food-disparagement charge, and a jury found the defendants not guilty of business disparagement. The U.S. Court of Appeals for the Fifth Circuit upheld these rulings in *Texas Beef Group v. Winfrey*, 201 F.3d 680 (5th Cir. 2000). The appeals court concluded that the key issue was the statute's definition of a "perishable food product." At trial, the defendants argued that live cattle are not perishable food, but the appeals court declined to rule on that issue. Instead, it focused on whether the defendants had knowingly disseminated false information about beef. The court grounded its analysis on the legal precedent that the First Amendment protects the expression of opinion as well as fact "so long as a factual basis underlies the opinion." It found that, at the time of the broadcast, the factual basis for the guest's opinions was truthful. As for the AIDS comparison, the court characterized it as hyperbole; in its view, exaggeration did not equal defamation. Because the challenged comments had a factual basis, Winfrey and her guest had a First Amendment right to say them.

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CROSS REFERENCES

First Amendment; Freedom of the Press; Prior Restraint.

LIBELANT

Formerly the party who filed an initiatory pleading (a formal declaration of a claim) in an ecclesiastical or religious matter or in an admiralty case, corresponding to the plaintiff in actions at law.

Since 1966 the Federal Rules of CIVIL PROCEDURE and Supplementary Admiralty Rules have governed admiralty actions, which are presently commenced by complaint.

CROSS REFERENCES

Admiralty and Maritime Law; Civil Procedure.

LIBELOUS

In the nature of a written defamation, a communication that tends to injure reputation.

LIBERATIVE PRESCRIPTION

See STATUTE OF LIMITATIONS.

LIBERTARIAN PARTY

The Libertarian Party was founded in Colorado in 1971 and held its first convention in Denver in 1972. In 1972, it fielded John Hospers for president and Theodora Nathan for VICE

PRESIDENT in the U.S. general election. The part appeared on two state ballots, receiving a total of 2,648 votes in Colorado and Washington. In the 1976 elections the party's 176 candidates garnered 1.2 million votes across the United States.

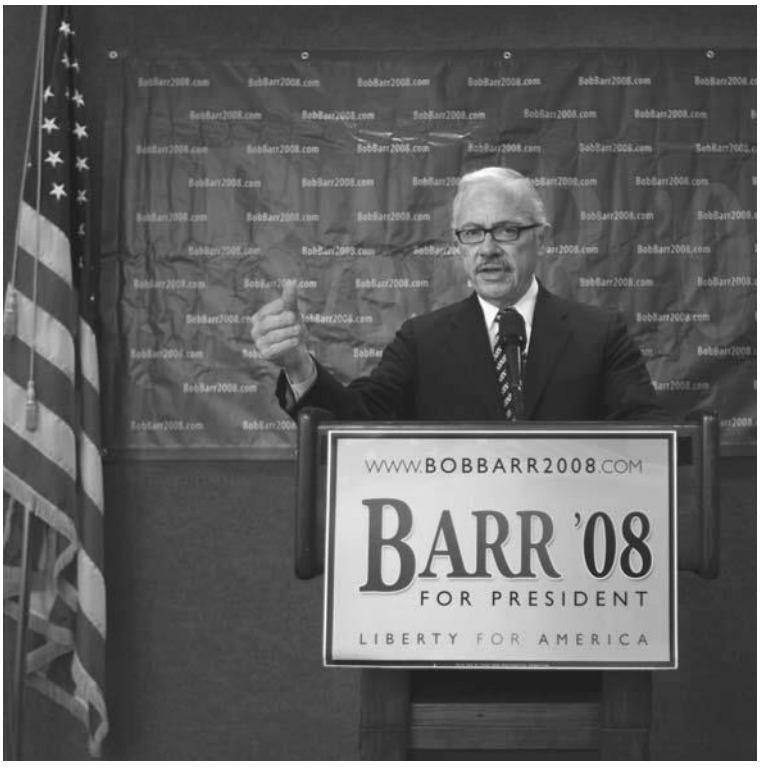
The Libertarian Party asserts that people have certain natural, individual rights and that deprivation of those rights is unjust. Two basic rights—the right to personal autonomy and the right to utilize previously unused resources—form the foundation of the party's values.

The Libertarian Party views government as both the cause and the effect of societal ills. Government causes crime and prejudice because excessive laws divide citizens, rob people of their independence, and frustrate initiative and creativity. It then attempts to eradicate crime and prejudice by exercising more control over individual rights.

The Libertarian Party promotes the ABOLITION of compulsory military service, government control of television and other media, laws regarding sexual activity between consenting adults, laws against the use of mood-altering substances, and government control of migration and IMMIGRATION. Under its leadership, farming quotas and subsidies would be eliminated, there would be no mandatory schooling and no MINIMUM WAGE, and defense spending would be drastically reduced. According to the party, the form of government it promotes would be far less expensive than the current system of federal, state, and local governance.

The Libertarian Party has achieved a small measure of electoral success. In 1980 Ed Clark received more than 1 million votes in his bid for the presidency. Having failed to win the popular vote in any state, however, Clark received no electoral votes. Andre Marrou garnered slightly less support as the party's presidential candidate in 1984, 1988, and 1992. In 1992 Marrou and his running mate Nancy Lord received approximately 291,000 votes. Although the party was not a factor in national politics during the 1990s, it had some success locally. In 1994 it had state representatives in New Hampshire and Alaska, mayors in California, and over 30 city council members in cities across the country.

In 1996 the party held its national convention in Washington, D.C., over the Fourth of July holiday. At the convention, it nominated economist and author Harry Browne as its presidential candidate. In his acceptance speech, Browne presented a number of controversial suggestions, including making a sizable reduction in the federal government, abolishing the federal INCOME TAX, abolishing federal drug and seizure laws, and increasing recognition of individual rights. Browne and running mate Jo Jorgensen appeared on the election ballot in all 50 states, along with approximately 1,000 Libertarian Party candidates for various public offices. Browne and Jorgensen won 485,759 votes, 0.5 percent of the national vote.



Bob Barr, a former Georgia state representative, ran as the Libertarian Party's presidential candidate in 2008.
AP IMAGES

Browne ran again for president in 2000, this time with Art Oliver as a running mate. Although the Libertarian Party was on the ballot in all 50 states, the Browne ticket received only 382,982 votes, over 100,000 fewer than in the 1996 election. During the 2000 elections, the party also entered candidates for more than half of the seats in Congress up for election. In the elections for the U.S. House of Representatives, Libertarian Party candidates received a total of 1.7 million votes, the first time in history a THIRD PARTY received more than one million votes for the House. In the 2004 presidential race, Michael Badnarik received 397,265 votes, but the party's 2008 candidate, Bob Barr, tallied

523,686 votes, receiving more votes than any other third party candidate.

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CROSS REFERENCE

Independent Parties.

LIBERTARIANISM

A political philosophy that advocates free will, individual rights, and voluntary cooperation.

The core doctrine of libertarianism begins with the recognition that people have certain natural rights and that deprivation of these rights is immoral. Among these natural rights are the right to personal autonomy and property rights, and the right to the utilization of previously unused resources. These two basic assumptions form the foundation of all libertarian ideals.

Libertarianism can be traced back to ancient China, where philosopher Lao-tzu advocated the recognition of individual liberties. The modern libertarian theory emerged in the sixteenth century through the writings of Etienne de La Boetie (1530–1563), an eminent French theorist. In the seventeenth century, JOHN LOCKE and a group of British reformers known as the Levellers fashioned the classical basis for libertarianism with well-received philosophies on human nature and economics. Since the days of Locke, libertarianism has attracted pacifists, utopianists, utilitarianists, anarchists, and fascists. This wide array of support demonstrates the accessibility and elasticity of the libertarian promotion of natural rights.

Essential to the notion of natural rights is respect for the natural rights of others. Without a dignified population, voluntary cooperation is impossible. According to the libertarian, the means to achieving a dignified population and voluntary cooperation is inextricably tied to the promotion of natural rights.

Libertarianism holds that people lose their dignity as government gains control of their body and their life. The abdication of natural rights to government prevents people from living in their own way and working and producing at their own pace. The result is a decrease in self-reliance and independence, which results in a decrease in personal dignity, which in turn depresses society and necessitates more government interference.

Thus, the libertarian views government as both the cause and the effect of societal ills. Government is the cause of crime and prejudice because it robs people of their independence and frustrates initiative and creativity. Then, having created the sources of crime and prejudice by depriving individuals of their natural rights, government attempts to exorcise the evils with more controls over natural rights.

Libertarians believe that government should be limited to the defense of its citizens. Actions such as murder, RAPE, ROBBERY, theft, embezzlement, FRAUD, ARSON, kidnapping, BATTERY, trespass, and pollution violate the rights of others, so government control of these actions is legitimate. Libertarians acknowledge human imperfection and the resulting need for some government deterrence and punishment of violence, nuisance, and harassment. However, government control of human activity should be limited to these functions.

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CROSS REFERENCES

Anarchism; Independent Parties; Natural Law; Utilitarianism.

LIBERTY

The state of being free; enjoying various social, political, or economic rights and privileges The concept of liberty forms the core of all democratic principles. Yet, as a legal concept, it defies clear definition.

The modern conception of liberty as implying certain fundamental or basic rights dates back to the writings of seventeenth- and eighteenth-century theorists such as Francis Hutcheson and JOHN LOCKE. Hutcheson believed that all people are equal and that they possess certain basic rights that are conferred by NATURAL LAW. Locke postulated that humans

are born with an innate tendency to be reasonable and tolerant. He also believed that all individuals are entitled to liberty under the natural law that governed them before they formed societies. Locke's concept of natural law required that no one should interfere with another's life, health, liberty, or possessions. According to Locke, governments are necessary only to protect those who live within the laws of nature from those who do not. For this reason, he believed that the power of government and the rule of the majority must be kept in check, and that they are best controlled by protecting and preserving individual liberties. Locke's philosophies gave rise to the SEPARATION OF POWERS and the system of checks and balances that are the basis of U.S. government.

Limitless freedom is untenable in a peaceful and orderly society. Yet the founders of the United States were concerned that individual liberty interests be adequately protected. Echoing Locke's natural-law theory, the DECLARATION OF INDEPENDENCE states that all people have inalienable rights, including the right to life, liberty, and the pursuit of happiness. Similarly, the Preamble to the Constitution outlines the Framers' intent to establish a government structure that ensures freedom from oppression. It reads, in part, "We the People … in Order to … secure the Blessings of Liberty to ourselves and our Posterity. …" The BILL OF RIGHTS sets forth a number of specific protections of individual liberties.

Through these documents, U.S. citizens are guaranteed FREEDOM OF SPEECH, press, assembly, and RELIGION; freedom from unreasonable searches and seizures; and freedom from SLAVERY or INVOLUNTARY SERVITUDE. CRIMINAL LAW and procedure require that a person may not be detained unlawfully and that a person who is accused of a crime is entitled to reasonable bail and a SPEEDY TRIAL. The right to be free from unlawful detention has been interpreted to mean not only that the government may not deprive a person of liberty without DUE PROCESS OF LAW, but also that a citizen has a right "to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his living by any lawful calling; and to pursue any livelihood or vocation" (*Allgeyer v. Louisiana,* 165 U.S. 578, 17 S. Ct. 427, 41 L. Ed. 832 [1897]). State governments may not regulate individual freedom except for a legitimate public purpose and only by means that are rationally designed to achieve that purpose (see *Nebbia v. New York,* 291 U.S. 502, 54 S. Ct. 505, 78 L. Ed. 940 [1934]).

The liberties guaranteed to individuals are not granted without restriction. Throughout U.S. history, the U.S. Supreme Court has held that individual freedom may be restricted when necessary to advance a compelling government interest, such as public safety, national security, or the protection of the rights of others. Countless cases have litigated the parameters of justifiable government restriction. In one such case, *Perry Education Ass'n v. Perry Local Educators' Ass'n,* 460 U.S. 37, 103 S. Ct. 948, 74 L. Ed. 2d 794 (1983), the Court found that the content of a message delivered in a public forum may be restricted if the restriction serves a compelling STATE INTEREST and is narrowly drawn to achieve that interest. Restrictions on speech in a public forum also may be upheld if the expressive activity being regulated is a of type that is not entitled to full FIRST AMENDMENT protection, such as obscenity. If a restriction on speech deals only with the time, place, and manner of the activity, it need only serve a significant government interest and allow ample alternative channels of communication (see *Perry*). In such an instance, the law does not need to be the least restrictive alternative; it is necessary only that the government's interest would be achieved less effectively without it and that the means chosen are not substantially broader than necessary to achieve the interest (*Ward v. Rock against Racism,* 491 U.S. 781, 109 S. Ct. 2746, 105 L. Ed. 2d 661 [1989]).

The Court has held that the government may infringe on a person's freedom of association by punishing membership in an organization that advocates illegal conduct if the defendant had knowledge of the group's illegal objectives and had the SPECIFIC INTENT to further them (see *Scales v. United States,* 367 U.S. 203, 81 S. Ct. 1469, 6 L. Ed. 2d 782 [1961]; *Noto v. United States,* 367 U.S. 290, 81 S. Ct. 1517, 6 L. Ed. 2d 836 [1961]).

The Court has also determined that when competing liberty interests clash, the majority may not necessarily impose its belief on the minority. In *ABINGTON SCHOOL DISTRICT V. SCHEMPP*, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963), the Court held that the freedom to exercise one's religion does not extend to prayer

sessions in public schools, even if the proposed prayer is nondenominational and favored by the majority. Justice TOM C. CLARK, writing for the majority, emphasized that the freedom to exercise one's religion ends when it infringes on another's right to be free from state-imposed religious practices. He wrote, "While the Free Exercise Clause clearly prohibits the use of STATE ACTION to deny the rights of free exercise to anyone, it has never meant that a majority could use the machinery of the State to practice its beliefs." The Court reaffirmed its holding that the Free Exercise Clause does not allow the majority to impose its beliefs on the minority in *WALLACE V. JAFFREE*, 472 U.S. 38, 105 S. Ct. 2479, 86 L. Ed. 2d 29 (1985).

The Court has engendered bitter and sustained controversy with its defense of privacy rights in cases such as ROE V. WADE, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), which found the constitutional right to privacy to include the right to obtain an ABORTION. Critics of such decisions contend that such liberties are not enumerated in the Constitution and that the Court should uphold only rights found in the Constitution. But the Court has consistently held that the liberties enumerated in the Constitution are a continuum that, in the words of Justice JOHN MARSHALL HARLAN, "includes a freedom from all substantial arbitrary impositions and purposeless restraints ... and which also recognizes ... that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgement" (*Poe v. Ullman,* 367 U.S. 497, 81 S. Ct. 1752, 6 L. Ed. 2d 989 [1961]).

The Court justified its findings of liberty rights that are not enumerated in the Constitution by stating that some rights are basic and fundamental, and that the government has a duty to protect those rights. It has held that the Constitution outlines a "realm of personal liberty which the government may not enter." As an example, it noted that MARRIAGE is not mentioned in the Bill of Rights and that interracial marriage was illegal in many places during the nineteenth century, but that the Court has rightly found these activities to be within the liberty interests guaranteed by the Constitution.

The Court has repeatedly held that individual liberties must be protected no matter how repugnant some find the activity or individual involved. For example, in *Planned Parenthood v. Casey,* 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 28 674 (1992), the Court stated, "Some of us as individuals find abortion offensive to our most basic principles of morality, but that cannot control our decision. Our obligation is to define the liberty of all, not to mandate our own moral code." In *West Virginia State Board of Education v. Barnette,* 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943), the Court invalidated a law mandating that all students salute theflag, and in TEXAS V. JOHNSON, 491 U.S. 397, 109 S. Ct. 2533, 105 L. Ed. 2d 342 (1989), it invalidated a law prohibiting burning of the flag. In all of these cases, the Court emphasized that individuals may disagree about whether the activity is morally acceptable, but the liberty inherent in the activity may not be proscribed even if a majority of the populace thinks that it should be.

Justice LOUIS D. BRANDEIS summarized the Court's general wariness of government intrusion into liberty interests, in *Whitney v. California,* 274 U.S. 357, 47 S. Ct. 641, 71 L. Ed. 1095 (1927): "Those who won our independence believed that the final end of the state was to make men free." The Court will continue to grapple with the extent to which organized society may restrict individual liberty without violating that mandate.

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CROSS REFERENCES

Constitution of the United States; Criminal Procedure; Freedom of Speech; Freedom of the Press; School Prayer.

LIBERTY OF CONTRACT

See *LOCHNER V. NEW YORK*.

LIBRARY OF CONGRESS

The Library of Congress, located in Washington, D.C., is the world's largest library, with nearly 110 million items in almost every language and format stored on 532 miles of bookshelves. Its collections constitute the world's most comprehensive record of human creativity and knowledge. Founded in 1800 to serve the reference

needs of Congress, the library has grown from an original collection of 6,487 books to a current accumulation of more than 16 million books and more than 120 million other items and collections, from ancient Chinese woodblock prints to compact discs.

The Library of Congress was created by Act of April 24, 1800 (2 Stat. 56), which provided for the removal of the seat of government to the new capital city of Washington, D.C. (Philadelphia, Pennsylvania had formerly served as the nation's capital), and for $5,000 "for the purchase of such books as may be necessary for the use of Congress ... and for putting up a suitable apartment for containing them therein." The library was housed in the new capitol until August 1814, when British troops invaded Washington, D.C., and burned the capitol building, destroying nearly three thousand volumes of the small congressional library. The first major book collection acquired by Congress was the personal library of former president THOMAS JEFFERSON, purchased in 1815 at a cost of $23,950. In 1851 a second fire destroyed two-thirds of the library's accumulated holdings of 35,000 volumes, including a substantial portion of the Jefferson library. Congress voted a massive appropriation to replace the lost books, and by the end of the Civil War, the collections of the library had grown to 82,000 volumes.

The librarian of Congress is appointed by the president with the ADVICE AND CONSENT of the Senate. In 1864 President ABRAHAM LINCOLN appointed as librarian Ainsworth Rand Spofford, who opened the library to the public and greatly expanded its collections. Spofford successfully advocated a change in the copyright law so that the library would receive two free copies of every book, map, chart, musical composition, engraving, print, and photograph submitted for copyright. Under subsequent legislation (2 U.S.C.A. §§ 131–168d) the library's acquisitions included free copies of the *Congressional Record* and of all U.S. statutes, which Spofford parlayed into document exchanges with all foreign nations that had diplomatic relations with the United States.

Soon the Capitol's library rooms, attics, and hallways were filled with the library's growing collections, necessitating construction of the library's first permanent building, the Thomas Jefferson Building, which opened in 1897. The JOHN ADAMS Building was added by Congress in 1939, and the JAMES MADISON Memorial Building in 1980. These three buildings provide nearly 65 acres of floor space.

The Reading Room in the rotunda of the Library of Congress building, 1901.
LIBRARY OF CONGRESS

Supported mainly by appropriations from Congress, the library also uses income derived from funds received from foundations and other private sources and administered by the Library of Congress TRUST Fund Board, as well as monetary gifts presented for direct application (2 U.S.C.A. §§ 154–163). Many of the greatest items in the library have come directly from individual U.S. citizens or were purchased with money donated by them. Gifts that have enriched the cultural heritage of the nation include the private papers of President Lincoln from his son ROBERT TODD LINCOLN; rare Stradivarius violins used for public performances; the Lessing J. Rosenwald collection of illustrated books and incunabula (early works of art or industry); Joseph Pennell's contribution of Whistler drawings and letters; and hundreds of thousands of letters and documents from

musicians, artists, scientists, writers, and public figures.

Congressional Research Service

The library's first responsibility is service to Congress. One department, the CONGRESSIONAL RESEARCH SERVICE (CRS), operates exclusively for the legislative branch of the government. The CRS provides objective, nonpartisan research, analysis, and information to assist Congress in its legislative, oversight, and representative functions.

The CRS evolved from the Legislative Reference Service, a unit developed by a former librarian, Herbert Putnam, whose tenure with the library spanned 40 years. The Legislative Reference Service was developed to prepare indexes, digests, and compilations of law that Congress might need, but it quickly became a specialized reference unit for information transfer and research.

The CRS mandate has grown over the years in response to the increasing scope of PUBLIC POLICY issues on the congressional agenda. The service answers more than 500,000 requests for research annually. Its staff anticipates congressional inquiries and provides timely and objective information and analyses in response to those inquiries at every stage of the legislative process and in an interdisciplinary manner. The CRS also creates and maintains a number of specialized reading lists for members of Congress and their staffs and disseminates other materials of interest. Finally, it maintains the parts of the Library of Congress's automated information system that cover legislative matters, including digests of all public bills and briefing papers on major legislative issues. The CRS director, assisted by a management team, oversees and coordinates the work of seven research divisions, which span a range of public policy subjects and disciplines.

Collections

The library's extensive collections include books, serials, and pamphlets on every subject, in a multitude of languages, and in various formats including map, photograph, manuscript, motion picture, and sound recording. Among them are the most comprehensive collections of Chinese, Japanese, and Russian language books outside Asia and the former Soviet Union; volumes relating to science and to U.S. and foreign law; the world's largest collection of published aeronautical literature; and the most extensive collection of incunabula in the Western Hemisphere.

The manuscript collections, containing about 46 million items, relate to manifold aspects of U.S. history and civilization and include the personal papers of most presidents, from GEORGE WASHINGTON to CALVIN COOLIDGE, as well as papers of people from many diverse arenas, such as Margaret Mead, Sigmund Freud, HENRY KISSINGER, THURGOOD MARSHALL, and thousands of others.

The library houses a perfect copy of the Gutenberg Bible, one of three such copies in the world. It also contains the oldest written material, a Sumerian cuneiform tablet dating from 2040 b.c.; the earliest known copyrighted motion picture, *Fred Ott's Sneeze,* copyrighted by Thomas Edison in 1893; and a book so small that it requires a needle to turn the pages. The musical collections contain volumes and pieces, in manuscript and published form, from classic works to the newest popular compositions. Other materials available for research include maps and views; photographic records from the daguerreotype to the latest news photo; musical recordings; speeches and poetry readings; prints, drawings, and posters; government documents, newspapers, and periodicals from all over the world; and motion pictures, microfilms, and audiotapes and videotapes.

Copyrights

Since 1870 the Library of Congress has been responsible for copyrights registered by the U.S. Copyright Office, located in the Madison Building (Acts of July 8, 1870 [16 Stat. 212–217]; February 19, 1897 [29 Stat. 545, codified as amended at 2 U.S.C.A. 131 (1997)]; October 19, 1976 [90 Stat. 2541, codified as amended at 2 U.S.C.A. 170 (1997)]). The Copyright Office has handled more than 20 million copyright registrations and transfers and processes 600,000 new registrations annually. All copyrightable works, whether published or unpublished, are subject to a system of statutory protection that gives the copyright owner certain exclusive rights, including the right to reproduce the work and distribute it to the public by sale, rental, lease, or lending. Works of authorship include books; periodicals; computer programs; musical compositions; song lyrics; dramas and dramatico-musical compositions; pictorial, graphic, and sculptural works; architectural

works; pantomimes and choreographic works; sound recordings; motion pictures; and other audiovisual works.

American Folklife Center

The American Folklife Center was established in the Library of Congress by Act of January 2, 1976 (20 U.S.C.A. § 2102 et seq.). Its function is to coordinate and carry out federal and nonfederal programs to support, preserve, and present American folklife through activities such as receiving and maintaining folklife collections, scholarly research, field projects, performances and exhibitions, festivals, workshops, publications, and audiovisual presentations. The center is the national repository for folk-related recordings, manuscripts, and other unpublished materials. Its reading room contains more than 3,500 books and periodicals; a sizable collection of magazines, newsletters, unpublished theses, and dissertations; field notes; and many textual and musical transcriptions and recordings. The center also administers the Federal Cylinder Project, which is charged with preserving and disseminating music and oral traditions recorded on wax cylinders dating from the late 1800s to the early 1940s. A cultural conservation study was developed at the center in cooperation with the INTERIOR DEPARTMENT pursuant to congressional mandate. Various conferences, workshops, and symposia are given throughout the year, and a series of outdoor concerts of traditional music are scheduled monthly at the library, from April to September.

Center for the Book

The Center for the Book was established in the Library of Congress by Act of October 17, 1977 (2 U.S.C.A. § 171 et seq.), to stimulate PUBLIC INTEREST in books, reading, and libraries and to encourage the study of books and print culture. The center is a catalyst for promoting and exploring the vital role of books, reading, and libraries throughout the world. Since 1984 at least 29 states have established statewide book centers that are affiliated with this national center.

National Preservation Program

To preserve its collections, the library uses the full range of traditional methods of conservation and binding as well as newer technologies such as the deacidification of paper and the digitization of original materials. These measures include maintaining materials in the proper environment, ensuring the proper care and handling of the collections, and stabilizing fragile and rare materials by placing them in acid-free containers to protect them from further deterioration. Research on long-standing preservation problems is conducted by the library's Preservation Research and Testing Office.

The National Film Preservation Board, established by the National Film Preservation Act of 1992 (2 U.S.C.A. § 179b), serves as a public advisory group to the librarian of Congress. The board consists of 36 members and alternates representing many parts of the diverse U.S. film industry, archives, scholars, and others. As its primary mission, the board works to ensure the survival, conservation, and increased public availability of the U. S. film heritage. This mission includes advising the librarian on the annual selection of films to the National Film Registry and counseling the librarian on the development and implementation of the national film preservation plan.

Extension of Service

The Library of Congress extends its service through an interlibrary loan system; photoduplication of books, manuscripts, maps, newspapers, and prints in its collections; a centralized cataloging program whereby the library acquires material published all over the world as well as material from other libraries and from U.S. publishers; and the development of general schemes of classification (the Library of Congress classification for law and the DEWEY DECIMAL SYSTEM), subject headings, and cataloging, embracing the entire field of printed matter.

The library also provides for the preparation of bibliographic lists responsive to the needs of government and research; the maintenance and publication of the *National Union* catalogs and other cooperative publications; the publication of catalogs, bibliographic guides, and texts of original manuscripts and rare books; the circulation in traveling exhibitions of items from the library's collections; and the provision of books in Braille, talking book records, and books on tape. In addition, the library employs an optical disk system that supplies articles on public policy to Congress and provides research and analytical services on a fee-for-service basis to the executive and judicial branches.

Users outside the library can gain free access to its online catalog of files through the Internet. Major exhibitions of the library are available online, as are selected prints and photographs, historic films, and political speeches. Internet sites include the Library of Congress World Wide Web (www.loc.gov); THOMAS, an important legislative service containing a searchable full text of the *Congressional Record,* texts of recent bills, and congressional committee information (thomas.loc.gov); American Memory Historical Collections, which includes documents, images, and other information about U.S. history (memory.loc.gov); Global Gateway, which provides presentations regarding world culture and resources (international.loc.gov/); pointers to external Internet resources including extensive international, national, state, and local government information; and an international electronic library of resources arranged by Library of Congress subject headings. The Library of Congress also contributes to the National Digital Library more than 40 million bibliographic records, summaries of congressional bills, copyright registrations, bibliographies and research guides, summaries of foreign laws, an index of Southeast Asian POW-MIA documents, selections from the library's unique historical collections, and more.

Reference Resources

Admission to the various research facilities of the library is free, and no introduction or credentials are required for persons over high school age. A photo identification and current address are required for the library's reading rooms and collections, and additional requirements apply for entry into certain collections like those of the Manuscript Division, Rare Book, and Special Collections Division, and Motion Picture, Broadcasting, and Recorded Sound Division. Priority is given to inquiries pertaining to the library's holdings of special materials or to subjects in which its resources are unique. Demands for service to Congress and federal agencies have increased, and thus reference service to others through correspondence is limited.

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CROSS REFERENCES

Copyright; Copyright, International.

LICENSE

The permission granted by competent authority to exercise a certain privilege that, without such authorization, would constitute an illegal act, a trespass or a tort. The certificate or the document itself that confers permission to engage in otherwise proscribed conduct.

A license is different from a permit. The terms *license* and *permit* are often used interchangeably, but generally, a permit describes a more temporary form of permission. For example, if a homeowner seeks to make structural additions to her property, she may have to apply for permits from local land-use and zoning boards. These permits expire on a certain date or when the work is finished. By contrast, the contractor who completes the work will likely hold a local license that allows her to operate her business for a certain number of years.

Licenses are an important and ubiquitous feature of contemporary society. Federal, state, and local governments rely on licensing to control a broad range of human activity, from commercial and professional to dangerous and environmental. Licenses may also be issued by private parties and by patent or copyright holders.

Government Licenses

The great many activities that require a license issued by a government authority include fishing; hunting; marrying; driving a motor vehicle; providing health care services; practicing law;

manufacturing; engaging in retail and wholesale commerce; operating a private business, trade, or technical school; providing commercial services such as those offered by WHITEWATER rafting outfitters and travel agencies; providing public services such as food and environmental inspection; and operating public pinball machines.

Not all persons engaged in a licensed activity need to obtain a license. For example, the owner of a liquor store must obtain a license to operate it, but the cashiers and stock persons need not obtain a license to work there. By contrast, not only does a dentist have to obtain a license to conduct business in a dental office, but dental hygienists and other dental assistants must each have a license to work in the office.

A license gives a person or organization permission to engage in a particular activity. If the government requires a license for an activity, it may issue criminal charges if a person engages in the activity without obtaining a license. Most licenses expire after a certain period of time, and most may be renewed. Failure to abide by certain laws and regulations can result in suspension or revocation of a license. Acquiring a license through FRAUD or misrepresentation will result in revocation of the license.

Licenses are issued by the administrative agencies of local, state, and federal lawmaking bodies. Administrative agencies are established by legislative bodies to regulate specific government activities and concerns. For example, the U.S. Congress and state legislatures have each created an agency that exercises authority over environmental issues. This agency usually is called a department of environmental protection or of conservation. It is responsible for issuing licenses for activities such as hunting, fishing, and camping. If the same agency has authority over environmental cleanups, it also may be responsible for issuing licenses for inspectors and businesses that specialize in waste management and removal. Specific boards or divisions within an agency may be responsible for issuing licenses.

The licensing process helps to control activity in a variety of ways. License application procedures allow government authorities to screen applicants to verify that they are fit to engage in the particular activity. Before any license is issued by an agency, the applicant must meet certain standards. For example, a person who seeks a driver's license must be at least age 16, must have passed a driver's test and a vision test, and must pay a fee. If an applicant is under age 18, the state DEPARTMENT OF MOTOR VEHICLES may require that the applicant obtain the signature of a parent or guardian. If the applicant seeks to drive other than a passenger vehicle, such as a motorcycle or semi-truck, the applicant has to pass tests that relate to the driving of that vehicle and obtain a separate license for driving that vehicle.

Bev Neth, director of Nebraska's Department of Motor Vehicles, points out features of the state's driver's licenses. Federal, state, and local governments rely on licensing to control a broad range of human activities, including driving.

AP IMAGES

The requirements for certain business licenses can be stringent. For example, an insurance adjuster in Maine must be at least 18 years old; be competent, trustworthy, financially responsible, and of good personal and business reputation; pass a written examination on insurance adjusting; and have been employed or have undergone special training for not less than one year in insurance adjustment (Me. Rev. Stat. Ann. tit. 24-A, § 1853 [West 1995]). The insurance board can investigate any applicant for an insurance adjuster's license and deny an applicant a license if he does not meet the qualifications.

Such rigorous licensing procedures are usually used if the activity places the license holder, or licensee, in a fiduciary relationship, that is, in a position of confidence and trust with other persons. Such activity usually involves the handling of money or health matters, and includes endeavors like medical care, LEGAL REPRESENTATION, accounting, insurance, and financial investment.

Requiring a license for a certain activity allows the government to closely supervise and control the activity. The agency responsible for issuing the license can control the number of licensees. This function is important for activities such as hunting, where the licensing of too many hunters may deplete wildlife populations and put hunters in danger of stray bullets.

A license is not a PROPERTY RIGHT, which means that no one has the absolute right to a license. The government may decline to issue a license when it sees fit to do so, provided that the denial does not violate federal or state law. No agency may decline to issue a license on the basis of race, RELIGION, sex, national origin, or ethnic background.

The denial of a license, the requirement of a license, or the procedures required to obtain a license may be challenged in court. The most frequent court challenges involve licenses pertaining to the operation of a business. Such was the case in *FW/PBS v. City of Dallas,* 493 U.S. 215, 110 S. Ct. 596, 107 L. Ed. 2d 603 (1990). In *FW/PBS* three groups of individuals and businesses in the adult entertainment industry filed suit in federal district court challenging a new ordinance passed by the Dallas City Council. The ordinance placed a number of new restrictions on sexually oriented businesses. Among other things it required that owners of sexually oriented businesses obtain a license, renew it each year, and submit to annual inspections.

On appeal, the Supreme Court upheld a requirement that hotels renting rooms for less than ten hours obtain a special license. The Court held that the city of Dallas's evidence that such motels fostered prostitution and led to a deterioration of the neighborhoods in which they existed was adequate justification for the requirement. However, the Court struck down the application of the licensing requirement to businesses engaged in sexually oriented expression, such as adult bookstores, theaters, and cabarets. The activities of these businesses are protected by the FIRST AMENDMENT, and licenses regarding activity protected by the First Amendment must be issued promptly. The Dallas ordinance failed to meet the promptness requirement because it did not limit the time for review of license applications or provide for quick JUDICIAL REVIEW of license denials. Thus, the Court declared it unconstitutional as applied to businesses engaged in expressive activity.

Private Party Licenses

When a landowner allows a person to do work or perform an act on the landowner's property, the visitor has a license to enter the property. This kind of license need not be signed and formalized: It may be oral or it may be implied by the relationship or actions of the parties. For example, a public utility inspector has a license to enter private property for the purposes of maintaining the utility and gauging consumption. In such a case, the grantor of the license, or licensor, owes a duty to the licensee to make sure the premises are safe for the licensee.

Patent and Copyright Holder Licenses

A license granted by the holder of a patent or a copyright on literary or artistic work gives the license holder a limited right to reproduce, sell, or distribute the work. Likewise, the owner of a trademark may give another person a license to use the mark in a region where the owner's goods have not become known and associated with the owner's use of the mark. These INTELLECTUAL PROPERTY licenses usually require that the licensee pay a fee to the licensor in exchange for use of the property. For example, computer software companies sell licenses to their products. In the licensing agreement users are informed that although they possess a disk containing the software, they have actually only purchased a license to operate it. The license typically forbids giving the software to someone else, making copies of it, or running it on more than one computer at a time.

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CROSS REFERENCES

Hunting; Patent; Tort Law; Trespass.

LICENTIOUSNESS

Acting without regard to law, ethics, or the rights of others.

The term *licentiousness* is often used interchangeably with lewdness or lasciviousness, which relate to moral impurity in a sexual context.

LIE DETECTOR TEST

See POLYGRAPH.

LIEN

A right given to another by the owner of property to secure a debt, or one created by law in favor of certain creditors.

A lien is an encumbrance on one person's property to secure a debt the property owner owes to another person. The statement that someone's property is "tied up" describes the effect of liens on both real and PERSONAL PROPERTY. *Lien* is a French word meaning "knot or binding" that was brought to Britain with the French language during the Norman Conquest in 1066.

Real Estate Liens

In many states a mortgage is regarded as a lien, not a complete transfer of title, and if not repaid the debt is recovered by foreclosure and sale of the real estate. Real estate is also affected by liens that favor local, state, and federal governments for real estate taxes and special assessments; state and federal governments for income and sales or use taxes; condominium and homeowners' associations; and general contractors, subcontractors, material suppliers, and laborers for the value of work or materials installed on real estate. The filing requirements and statutes of limitations for these liens vary according to the law of each state.

Perhaps the riskiest move a purchaser of real estate can make is to buy without making certain that there are no liens on the property or without obtaining TITLE INSURANCE against liens on the property. In many states liens are secret: that is, they are hidden from the public records until required to be filed.

The priority of liens on a construction project relates back to the first visible commencement of the work. This line of law makes the last work, perhaps landscaping, equal in priority to the first, excavating. This means that during the entire work of construction, the owner must obtain waivers of lien from each subcontractor and material supplier. Without these waivers the real estate is subject to liens of all such claimants, if the general contractor, though paid in full, fails to pay them. A waiver is a voluntary relinquishment of a known right. Waivers of lien must be in writing, give a sufficient description of the real estate, and be signed by the one claiming a lien. No payment need be made if the claimant agrees to release the land from the lien and rely only on the credit of the owner or general contractor for payment of the debt.

Lien claimants are protected in this way because all their materials and labor are "buried" in the real estate, having become part of it. They cannot be reclaimed without irreparable damage to the property. Unlike mortgage liens, the liens of these claimants, called mechanic's liens, offer no redemption in a foreclosure judgment.

Other Liens

The published statutes of a state usually have a section on the topic of liens under which is listed most or all of the liens allowed by state law. A great number of persons in trade or business obtain liens for their services to personal property: garage keepers and warehouse owners for unpaid rent for storage; automobile mechanics for repairs; jewelers; dry cleaners and furriers; artisans for restoration of art objects; bankers; factors dealing in commodities; and many others. Not to be outdone, attorneys have a lien for their fees and may retain clients' files—perhaps containing vital information or documents needed by the client for work or family affairs—until the fees are paid.

A judgment lien can, when entered by a court after a suit, affect all the real and personal property of one who fails to pay a debt, such as a PROMISSORY NOTE to a bank, credit card balance, or judgment for injury the person may have caused. In some states the lien of a properly docketed judgment affects all the debtor's property in every county where notice of the judgment is filed. State law governs the length of time such liens survive—which in some states is as long as ten years. Judgments can be enforced by executions and sale of property until the amount due is satisfied.

Courts of equity have the power to create so-called equitable liens on property to correct some injustice. For example, one whose money was embezzled may obtain a lien on the wrongdoer's property by suing for a CONSTRUCTIVE TRUST.

Discharging a Lien

Liens are discharged after a certain length of time. The requirements for commencing their foreclosure vary among the states. If a person pays and satisfies a lien, she should be careful to obtain a written, legally sufficient release or satisfaction,

and file or record it in the appropriate government office, so that her title and credit reports no longer show the encumbrance.

CROSS REFERENCE

Title Search.

LIFE ESTATE

An estate whose duration is limited to the life of the party holding it, or some other person.

LIFE IN BEING

A phrase used in the common-law and statutory rules against perpetuities, meaning the remaining duration of the life of a person who is in existence at the time when the deed orwill takes effect.

The courts developed the rule during the seventeenth century in order to limit a person's power to control the ownership and possession of property after death, and to ensure the transferability of property.

CROSS REFERENCE

Rule Against Perpetuities.

LIFE OR LIMB

The phrase within the Fifth Amendment to the U.S. Constitution, commonly known as the Double Jeopardy Clause, that provides, "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb," pursuant to which there can be no second prosecution after a first trial for the same offense.

The words *life or limb* are not interpreted strictly; they apply to any criminal penalty.

CROSS REFERENCE

Double Jeopardy.

LIFO

An abbreviation for last in, first out, *a method used in inventory accounting to value the merchandise of a particular business.*

LIFO assumes that the last GOODS purchased are the first sold and, as a result, those items that remain unsold in the inventory at the end of the year are assumed to be those which were purchased first.

CROSS REFERENCE

FIFO.

LIFT

To raise; to take up.

To lift a PROMISSORY NOTE (a written commitment to pay a sum of money on a certain date) is to terminate the obligation by paying its amount.

To lift the bar of the STATUTE OF LIMITATIONS is to remove, by some sufficient act or acknowledgment, the obstruction that it interposes. For example, some states will not permit an action to be instituted on a debt owed after ten years from the date of the debt. This is a ten-year statute of limitations. If the debtor acknowledges in writing that he or she owes the debt and will pay it on a certain date, this conduct lifts the bar of the statute of limitations so that the debtor can be sued on the debt for another ten years.

LIGAN

Goods cast into the sea tied to a buoy, so that they may be found again by the owners. When goods are cast into the sea in storms or shipwrecks and remain there, without coming to land, they are distinguished by the names of jetsam, flotsam, and ligan.

LIMITATION

A qualification, restriction, or circumspection.

In the law of property, a limitation on an estate arises when its duration or quality is in some way restricted. For example, in the conveyance, "Owner conveys BLACKACRE to A until B leaves the country," A's estate is limited, since A is given Blackacre for only a specified length of time.

LIMITATIONS OF ACTIONS

Statutes restricting the right to bring suit on certain civil causes of action or criminal prosecutions, which provide that a suit may not be commenced unless it is brought within a designated period after the time that the right to sue accrued.

CROSS REFERENCE

Statute of Limitations.

LIMITED

Restricted in duration, extent, or scope; confined.

Limited liability is the rule that the owners or shareholders of a corporation cannot usually

be sued as individuals for corporate actions unless they are involved in FRAUD or criminal conduct.

Limited is also a designation following the name of a corporation that indicates its corporate and limited liability status; it is abbreviated *Ltd.* It is found most commonly after British and Canadian corporate names, although it is sometimes used in the United States.

LIMITED LIABILITY COMPANY

A noncorporate business whose owners actively participate in the organization's management and are protected against personal liability for the organization's debts and obligations.

The limited liability company (LLC) is a hybrid legal entity that has both the characteristics of a corporation and of a partnership. An LLC provides its owners with corporate-like protection against personal liability. It is, however, usually treated as a noncorporate business organization for tax purposes.

History

The LLC is a relatively new business form in the United States, although it has existed in other countries for some time. In 1977 Wyoming became the first state to enact LLC legislation: it wanted to attract capital and created the statute specifically for a Texas oil company (W.S. 1977 § 17-15-101 et seq., Laws 1977, ch. 158 § 1). Florida followed with its own LLC statute in 1982 (West's F.S.A. § 608.401, Laws 1982, c. 82-177 § 2). At this point states had little incentive to form an LLC because it remained unclear whether the INTERNAL REVENUE SERVICE (IRS) would treat an LLC as a partnership or as a corporation for tax purposes.

In 1988 the IRS issued a ruling that an LLC in Wyoming would be treated as a partnership for tax purposes. This allowed the taxable profits and losses of an LLC to flow through to the LLC's individual owners; unlike a typical corporation, an LLC would not be taxed as a separate business organization. After the 1988 IRS ruling, nearly every state in the United States enacted an LLC statute, and the LLC now is a widely recognized business form. Many legal issues concerning the LLC are still developing, however.

In 1995 the COMMISSIONERS ON UNIFORM LAWS approved the Uniform Limited Liability Company Act. It was amended in 1996. Unlike other UNIFORM ACTS related to business entities, such as the Uniform Partnership Act, the uniform law governing LLCs has not been influential. As of 2003 only eight states and the U.S. Virgin Islands had adopted the uniform law; the remaining states have drafted their own laws.

Formation

State law governs the creation of an LLC. Persons form an LLC by filing required documents with the appropriate state authority, usually the SECRETARY OF STATE. Most states require the filing of ARTICLES OF ORGANIZATION. These are considered public documents and are similar to ARTICLES OF INCORPORATION, which establish a corporation as a legal entity. The LLC usually comes into existence on the same day the articles of organization are filed and a filing fee is paid to the secretary of state.

The minimum information required for the articles of organization varies from state to state. Generally, it includes the name of the LLC, the name of the person organizing the LLC, the duration of the LLC, and the name of the LLC's registered AGENT. Some states require additional information, such as the LLC's business purpose and details about the LLC's membership and management structure. In all states an LLC's name must include words or phrases that identify it as a limited liability company. These may be the specific words *Limited Liability Company* or one of various abbreviations of those words, such as *LLC* or *Ltd. Liability Co.*

Structure

The owners of an LLC are called members and are similar in some respects to shareholders of a corporation. A member can be a natural person, a corporation, a partnership, or another legal association or entity. Unlike corporations, which may be formed by only one shareholder, LLCs in most states must be formed and managed by two or more members. LLCs are therefore unavailable to sole proprietors. In addition, unlike some CLOSELY HELD, or S, corporations, which are allowed a limited number of shareholders, LLCs may have any number of members beyond one.

Generally, state law outlines the required governing structure of an LLC. In most states members may manage an LLC directly or delegate management responsibility to one or more managers. Managers of an LLC are usually elected or appointed by the members. Some LLCs may have one, two, or more managers. Like a general partner in a limited partnership or an officer in a corporation, an LLC's manager is responsible for the day-to-day management of the business.

A manager owes a duty of loyalty and care to the LLC. Unless the members consent, a manager may not use LLC property for personal benefit and may not compete with the LLC's business. In addition, a manager may not engage in self-dealing or usurp an LLC's business opportunities, unless the members consent to a transaction involving such activity after being fully informed of the manager's interest.

Operating Agreement

Nearly every LLC maintains a separate written or oral operating agreement, which is generally defined as the agreement between the members that governs the affairs of the LLC. Some states call an operating agreement regulations or a member control agreement. Although some states do not require an operating agreement, nearly all LLCs create and maintain a written document that details their management structure.

The operating agreement typically provides the procedures for admitting new members, outlines the status of the LLC upon a member's withdrawal, and outlines the procedures for dissolution of the LLC. Unless state law restricts the contents of an operating agreement, members of an LLC are free to structure the agreement as they see fit. An LLC can usually amend or repeal provisions of its operating agreement by a vote of its members.

Membership Interests

A member of an LLC possesses a membership interest, which usually includes only an economic interest. A membership interest is considered PERSONAL PROPERTY and may be freely transferred to nonmembers or to other members. The membership interest usually does not include any right to participate in the management of the LLC. Accordingly, if a member assigns or sells a membership interest to another person, that other person typically receives only the right to the assigning member's share of profits in the LLC. Persons who receive a membership interest are not able to participate as voting members or managers unless they are admitted as new members.

State law and an LLC's operating agreement or articles of organization provide the circumstances under which a person may be admitted as a new member. These circumstances vary. Usually the admission of a new member requires the consent of existing members, and in most cases the consent must be unanimous. In some cases the articles of organization do not allow for admission of new members. In others the recipient of a membership interest may be automatically admitted as a new member.

Member Contributions

Members of an LLC contribute capital to the LLC in exchange for a membership interest. There is no minimum amount of capital contribution, and members usually can contribute cash, property, or services. By default, the total amount of a member's capital contribution to an LLC determines the member's voting and financial rights in the LLC. In other words, unless an LLC's operating agreement provides for a different arrangement, the profits and losses of the LLC are shared proportionally in relation to the members' contributions to the LLC. For example, if a member's capital contributions constitute 40 percent of an LLC's capital, that member typically has a 40 percent stake in the LLC and has more voting power than a member with a 20 percent interest.

A member may promise a future contribution to an LLC in exchange for a membership interest. If the member later fails to make the contribution, the LLC generally may enforce the promise as a contract or sell the member's existing interest to remedy the failure.

Distributions of profits or assets to members are usually governed by an LLC's operating agreement. Most state LLC laws do not require distributions to members other than when a member withdraws or terminates membership. Members vote to determine all aspects of distributions to members, including amount and timing. Because a member's share of any distribution or loss depends on the member's share of all capital contributions to an LLC, the LLC maintains records of each member's capital contribution.

Liability

State LLC statutes specifically provide that members of an LLC are not personally liable for the LLC's debts and obligations. This limited liability is similar to the liability protection for corporate shareholders, partners in a limited partnership, and partners in a LIMITED LIABILITY PARTNERSHIP. Under certain circumstances, however, a member may become personally liable for an LLC's debts.

An individual member is generally personally liable for his or her own torts and for any contractual obligations entered into on behalf of the member and not on behalf of an LLC. In addition, a member is personally liable to a third person if the member personally guarantees a debt or obligation to the third person. A person who incurs debts and obligations on behalf of the LLC prior to the LLC's formation is jointly and severally liable with the LLC for those debts and obligations.

Members may also become personally liable for an LLC's debts or obligations under the "piercing-the-corporate-veil" theory. This doctrine imposes personal liability upon corporate shareholders and applies primarily if a corporation is undercapitalized, fails to follow corporate formalities, or engages in FRAUD. Although the law of LLCs is still developing, piercing the corporate veil is likely applicable to an LLC that fails to follow the legal formalities required to manage the LLC. LLC statutes in Colorado, Illinois, and Minnesota specifically apply the corporate veil-piercing theory to LLCs.

A member is generally considered an agent of an LLC and thus may bind the LLC for the debts and obligations of the business. When a member has apparent or actual authority and acts on behalf of an LLC while carrying on the usual business of the LLC, the member binds the LLC. If a third person knows that the member is not authorized to act on behalf of the LLC, the LLC is generally not liable for the member's unauthorized acts. Some states also limit a member's authority to act as an agent of an LLC.

Records and Books

Many LLC statutes require an LLC to maintain sufficient books and records of its business and management affairs. This requirement varies from state to state. The books and records generally detail the members' contributions to the LLC, the LLC's financial and tax data, and other financial and management information. Like a partnership's books, an LLC's books generally must be kept at the LLC's principal place of business, and each member must have access to and must be allowed to inspect and copy the books upon reasonable demand.

Taxation

Prior to 1997, the IRS generally treated an LLC as a partnership for federal INCOME TAX purposes. If an LLC is taxed as a partnership, its members are taxed only on their share of the LLC profits. Any gains, losses, credits, and deductions flow through the LLC to the members, who report them as income and losses on their personal TAX RETURN.

The IRS developed a system for determining whether an LLC was formed more like a corporation or more like a partnership. Under prior regulations, if the IRS determined that the LLC's operation was more similar to a corporation, the LLC is taxed as a corporation, meaning that both the LLC and its members were taxed. Specifically, the IRS observed whether the LLC had such characteristics as limited liability, centralized management, free transferability of interests, and continuity of life.

However, the IRS passed regulations in 1996, effective in 1997, that allowed LLC members to elect whether the company is a corporation or a partnership for taxation purposes, 26 C.F.R. § 301.7701-3 (2002). The regulations, known as "check-the-box" regulations, generally freed LLC owners from worrying about whether their method of operation would require them to pay corporate taxes instead of partnership taxes. Accordingly, many LLCs may operate similar to a corporation (centralized management with member owners), yet the members may enjoy taxes that flow through the entity.

Member Withdrawal

Members may withdraw from an LLC unless the operating agreement or articles of organization limit their ability to do so. A member must usually provide to the LLC written notice that he or she intends to withdraw. If a withdrawal violates the operating agreement, the withdrawing member may be liable to the other members or the LLC for damages associated with it. State law frequently sets forth the circumstances under which a member may withdraw from an LLC.

In many states a member may withdraw only if he or she provides six months' written notice of the intent to withdraw. In a few states, an LLC cannot prevent a member's withdrawal.

A member who withdraws is usually entitled to a return of his capital contribution to an LLC, unless the withdrawal is unauthorized. Some LLCs instead pay a withdrawing member the FAIR MARKET VALUE of his or her membership interest. The operating agreement typically provides for the method and manner of payment of a withdrawing member's interest. State law also governs those issues.

Dissolution

Dissolution means the legal end of an LLC's existence. In most states an LLC legally dissolves upon the death, disability, withdrawal, BANKRUPTCY, or expulsion of a member. These occurrences are generally called disassociations. Other circumstances that bring about dissolution include bankruptcy of the LLC, a court order, or the fulfillment of the LLC's stated period of duration.

Most states provide for the continuation of an LLC after the disassociation or withdrawal of a member. Continuation after a member's disassociation usually requires the remaining members' unanimous consent. Some states require that the articles of organization or operating agreement allow for the continuation of the business after a member's disassociation. Some states allow an LLC's articles of organization or operating agreement to require the continuation of the business after a member's dissociation even if the remaining members do not provide unanimous consent.

If an LLC dissolves, state law and the LLC's operating agreement usually outline the process for winding up the LLC's business. In this process the LLC pays off its remaining creditors and distributes any remaining assets to its members. The LLC's creditors receive priority. Although members may be creditors, they are not creditors in determining the members' distributive shares of any remaining assets. After the LLC pays off its creditors, and only then, it distributes the remaining assets to its members, either in proportion to the members' shares of profits or under some other arrangement outlined in the operating agreement. After an LLC winds up its business, most states require it to file articles of dissolution.

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LIMITED LIABILITY PARTNERSHIP

A form of general partnership that provides an individual partner protection against personal liability for certain partnership obligations.

The limited liability partnership (LLP) is essentially a general partnership in form, with one important difference. Unlike a general partnership, in which individual partners are liable for the partnership's debts and obligations, an LLP provides each of its individual partners protection against personal liability for certain partnership liabilities.

In 1991 Texas enacted the first LLP statute, largely in response to the liability that had been imposed on partners in partnerships sued by government agencies in relation to massive savings and loan failures in the 1980s. The Texas statute protected partners from personal liability for claims related to a copartner's negligence, error, omission, incompetency, or malfeasance. It also permanently limited the personal liability of a partner for the errors, omissions, incompetence, or negligence of the partnership's employees or other agents. By the mid-1990s, at least twenty-one states and the DISTRICT OF COLUMBIA had adopted LLP statutes.

The limit of an individual partner's liability depends on the scope of the state's LLP legislation. Many states provide protection only against tort claims and do not extend protection to a partner's own negligence or incompetence or to the partner's involvement in supervising wrongful conduct. Other states provide broad protection, including protection against contractual claims brought by the partnership's creditors. For example, Minnesota enacted an expansive LLP statute in 1994. This piece of legislation provided that a partner in an LLP was not liable to a creditor or for

any obligation of the partnership. It further provided, however, that a partner was personally liable to the partnership and copartners for any breach of duty, and also allowed a creditor or other claimant to pierce the limited liability shield of a partner in the same way a claimant may pierce the corporate veil of a corporation and personally sue an individual member of the corporation.

In states that recognize LLPs, a partnership qualifies as an LLP by registering with the appropriate state authority and fulfilling various requirements. Some states require proof that the partnership has obtained adequate liability insurance or has adequate assets to satisfy potential claims. All states require a filing fee for registration and also require that an LLP include the words *Registered Limited Liability Partnership* or the abbreviation *LLP* in its name.

A partnership that renders specific professional services may form an LLP and register as a professional limited liability partnership (PLLP). A PLLP is generally the same as an LLP except that it is an association solely of professionals. Each state specifies the qualifying professions for a PLLP. This business form is typically available to attorneys, physicians, architects, dentists, engineers, and accountants. New York's LLP statute restricts eligibility solely to partnerships that render professional services.

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LIMITED TEST BAN TREATY

The Limited Test Ban Treaty (LTBT), sometimes called the Partial Test Ban Treaty, was first signed in 1963 by the United States, the Union of Soviet Socialist Republics (U.S.S.R.), and the United Kingdom. It prohibits the testing of NUCLEAR WEAPONS in the atmosphere, underwater, or in space. As the first significant arms control agreement of the COLD WAR, the LTBT set an important precedent for future arms negotiations.

President Kennedy ratifies the Limited Test Ban Treaty on October 7, 1963. Looking on are Sen. John Pastore, W. Averell Harriman, Sen. James Fulbright, Dean Rusk, Sen. George Aiken, Sen. Hubert Humphrey, Sen. Everett Dirksen, William Foster, Sen. Howard Cannon, and Sen. Leverett Saltonstall.

BETTMANN/CORBIS.

The LTBT followed quickly on the heels of the 1962 CUBAN MISSILE CRISIS, in which the United States and the U.S.S.R. came to the brink of war over the Soviet Union's placement of missiles in Cuba. Alarmed at the prospect of nuclear war, President JOHN F. KENNEDY, of the United States, and Premier Nikita Khrushchev, of the Soviet Union, agreed to begin serious arms control negotiations. The LTBT was one of the first fruits of these negotiations. Proponents of the treaty claimed that it would prevent contamination of the environment by radioactive fallout from nuclear testing, slow down the arms race, and inhibit the spread of nuclear WEAPONS to other countries.

Although Kennedy hailed the LTBT as a significant achievement of his presidency, he was disappointed that he could not secure a comprehensive test ban treaty, which would have banned all forms of nuclear testing. Lacking such a ban, the superpowers and other countries with nuclear capability continued to test nuclear weapons underground. However, article 1, section b, of the LTBT pledges that each of its signatory countries will

seek "a treaty resulting in the permanent banning of all nuclear test explosions, including all such explosions underground." By 1973, a total of 106 countries had signed the LTBT, and by 1992, that number had grown to 119.

Later test ban treaties have included the Threshold Test Ban Treaty of 1974, which prohibited nuclear tests of more than 150 kilotons (the explosive force of 150,000 tons of TNT), and the Peaceful Nuclear Explosions Treaty of 1976. Although a comprehensive test ban agreement has not yet been reached, the nuclear powers and many nations without nuclear capabilities continue to negotiate the provisions of such a treaty.

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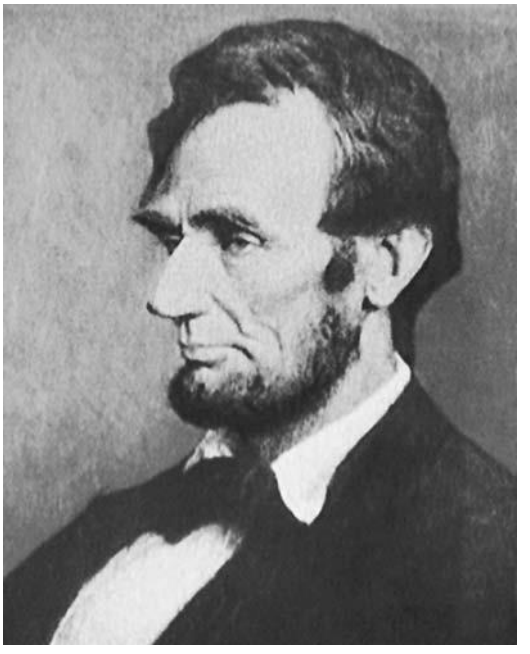
Arms Control and Disarmament.

v LINCOLN, ABRAHAM

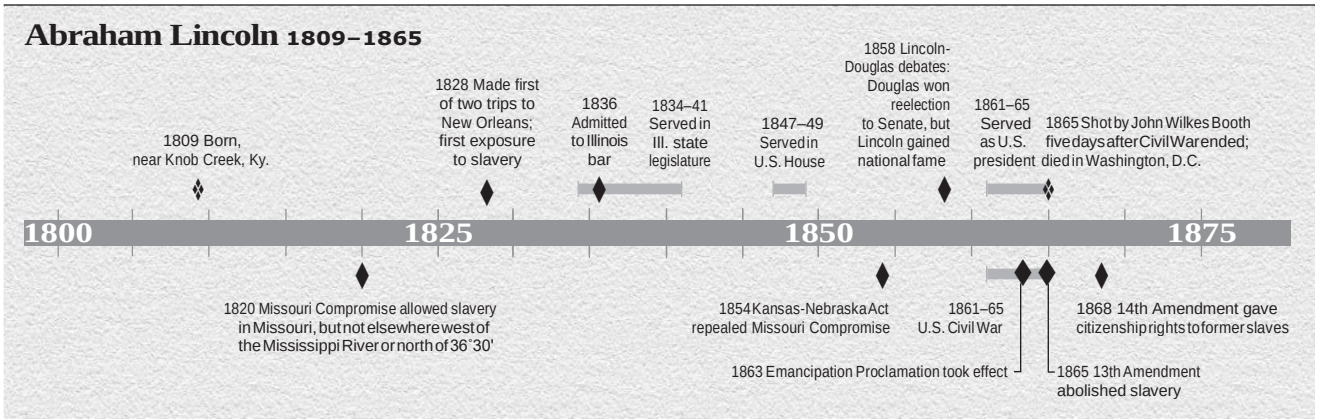
Abraham Lincoln was the 16th PRESIDENT OF THE UNITED STATES, serving from 1861 until his ASSASSINATION in April 1865. Lincoln and his supporters preserved the Union by defeating the South in the CIVIL WAR.

Lincoln was born February 12, 1809, in Hodgenville, Kentucky. In 1816 his family moved to a farm in Indiana, where he spent the rest of his childhood. He attended school for less than a year and gained most of his education by reading books. In 1828 and 1831 he made flatboat trips down the Mississippi River to take produce to New Orleans. On these trips he was first exposed to the institution of slavery.



Abraham Lincoln.
PAINTING BY DOUGLAS VOLK. LIBRARY OF CONGRESS

In 1830 his family moved to Decatur, Illinois. He left his family in 1831 and moved to New Salem, Illinois, where he worked at various jobs and continued his self-education. He began to study law, then was sidetracked by political ambitions.



In 1832 he ran for the state legislature as a member of the WHIG PARTY. He aligned himself with the views of Whig party leader HENRY CLAY, who served as a U.S. senator from Kentucky. Like Clay, Lincoln promised to use the power of the government to improve the life of the people he represented. During the 1832 campaign, the Black Hawk War erupted in southern Illinois. Lincoln enlisted in the local militia and was elected captain. Though he served for eighty days, he never saw battle. His service in the military distracted him from his campaign for the legislature, and he lost his first election.

In 1834 he was elected to the state legislature. He was reelected in 1836, 1838, and 1840. John T. Stuart, a fellow legislator and also a lawyer, was impressed with Lincoln's intellectual and oratorical abilities and encouraged him to practice law. In the fall of 1836, Lincoln was admitted to the Illinois bar, and in 1837 he became Stuart's law partner in Springfield, Illinois. In 1841 the pair dissolved their partnership and Lincoln began a new partnership with Stephen T. Logan. By 1844 that arrangement had dissolved and Lincoln took William H. Herndon as a partner. Lincoln was a hardworking attorney who over the years represented railroad companies and other business entities. By the 1850s he had argued many times before the Illinois Supreme Court and various federal courts.

However, his interest in politics continued. In 1847 he was elected to the U.S. House of Representatives as a member of the Whig party. His one brief term in this office was detrimental to his career, for his opposition to the Mexican War and his stand on several other issues were received unfavorably by his constituents.

He did not seek reelection in 1848, choosing instead to work on the presidential campaign of ZACHARY TAYLOR. After Taylor's victory Lincoln was severely disappointed when he failed to receive a prominent presidential appointment. He abandoned politics and devoted his energies to his law practice in Springfield.

Events involving slavery soon drew Lincoln back into the political arena. The passage in 1854 of the KANSAS-NEBRASKA ACT infuriated Lincoln. Senator STEPHEN A. DOUGLAS, of Illinois, a Democrat and rival of Lincoln's, had drafted this legislation, which revoked the MISSOURI COMPROMISE OF 1820. The repeal meant that the settlers of Kansas and Nebraska could allow slavery to exist if they so wished. This was intolerable to Lincoln and many antislavery Whigs and Democrats. Lincoln took to the political stump again, railing against slavery and the congressional actions that had placed the issue at the forefront of national policy.

The Whig party fell apart over the slavery question. In 1856 Lincoln joined others opposed to slavery from both the Whig and Democrat parties, in the newly formed REPUBLICAN PARTY. He quickly rose to prominence. The Republicans chose him as their candidate in the 1858 senatorial race against Douglas. The campaign was marked by a series of seven brilliant debates between the two contenders. Lincoln advocated loyalty to the Union, regarded slavery as unjust, and was opposed to any further expansion of slavery. He opened his campaign by declaring, "'A house divided against itself cannot stand.' I believe this government cannot endure permanently *half* slave and *half* free." Lincoln lost the election owing to an unfavorable apportionment of legislative seats in Illinois. (At that time U.S. senators were elected by a vote of the state legislature.) Though Republicans garnered larger numbers of votes, Douglas was reelected.

Despite the Senate loss, Lincoln's national reputation was enhanced by his firm antislavery position. He was urged to run for president in 1860. At the Republican National Convention in Chicago in May 1860, Lincoln defeated William H. Seward for the nomination. A split in the DEMOCRATIC PARTY led to the fielding of two Democratic candidates, John C. Breckenridge and Douglas. This split enabled Lincoln easily to defeat his rivals, including JOHN BELL, head of the Constitutional Union party. He would be easily reelected in 1864.

WHENEVER I HEAR ANYONE ARGUING FOR SLAVERY, I FEEL A STRONG IMPULSE TO SEE IT TRIED ON HIM PERSONALLY.
—ABRAHAM LINCOLN

By the time Lincoln took his oath of office in March 1861, seven Southern states had seceded from the Union and had established the CONFEDERATE STATES OF AMERICA. Jefferson Davis was elected president of the new government. Lincoln wished to find a solution short of war that would preserve the Union, but there were few options. When Lincoln allowed supplies to be sent to Fort Sumter, a Union base on an island outside Charleston, South Carolina, the new Confederate government seized the opportunity to interpret this as an act of war. On April 12, 1861, Fort Sumter was attacked by Confederate forces, and the Civil War began.

Lincoln's initial actions against this act of aggression included drafting men for military service, approving a blockade of the Southern

The Lincoln Assassination: Conspiracy or a Lone Man's Act?

On April 14, 1865, President Abraham Lincoln was assassinated at Ford's Theater in Washington, D.C. Five days earlier, Confederate General Robert E. Lee had surrendered to Union troops. John Wilkes Booth, a well-known actor, Confederate sympathizer, and spy, has gone down in history as the lone assailant of Lincoln. However, Booth was killed by federal soldiers before he could be brought to trial. Eyewitnesses at Ford's Theater identified Booth as the man who shot the president at point-blank range with a single bullet to the back of the head. But Booth's exact motive in the killing was never established. In the wake of the first ASSASSINATION of a U.S. president, eight of Booth's associates were charged as conspirators. All eight were convicted. However, since then, some modern theories have downplayed the roles of Southern radicals in the conspiracy. Some historians have even pointed fingers at the Republicans, Lincoln's own party.

Shortly before his death, Lincoln announced his RECONSTRUCTION policy for restoring the United States. He advocated "malice toward none, charity for all." However, more than a handful of Confederates distrusted Yankee politics. Confederate plots to kill the president or kidnap him had certainly existed long before April 1865. Lincoln appeared unconcerned about the threats, however, and refused to heed the advice of his advisers to take fewer risks in his public appearances. "What does anybody want to assassinate me for?" Lincoln once asked. "If anyone wants to do so, he can do it any day or night, if he is ready to give his life for mine. It is nonsense."

Booth fled Ford's Theater immediately after killing Lincoln and headed for refuge in the South. The Union cavalry, after a massive manhunt (announced throughout the nation), cornered Booth at the Garrett farm, his hiding spot in Virginia. Soldiers shot him through the neck leaving him partially paralyzed. Booth somehow managed to exit the barn when it was set on fire. He died at the feet of federal officers on the morning of April 26.

In somewhat mysterious fashion, Booth's "diary" (actually an 1864 datebook), was recovered from the site of his death. Booth wrote a running commentary, in scattered detail, on his plans before he shot Lincoln, and the developments of his final days. He wrote: "For six months we had worked to capture. But our cause, being almost lost, something decisive & great must be done. But it's failure was owing to others, who did not strike for their country with a heat. I struck boldly and not as the papers say."

Booth even described himself as a savior, claiming, "Our country owed all her trouble to him, and God simply made me the instrument of his punishment." Booth's diary would not be used directly as evidence in the trial of others with whom

states, and suspending the WRIT of HABEAS CORPUS. His troop request led to the secession of Virginia, North Carolina, Tennessee, and Arkansas. Suspending habeas corpus effectively curtailed civil liberties, as persons who were suspected of being Southern sympathizers could be held in custody indefinitely. All these actions were taken by EXECUTIVE ORDER, in Lincoln's capacity as commander in chief, because Congress was not in session at the time.

During the early stages of the war, the North suffered great losses, particularly at Bull Run. A succession of Union generals failed to achieve military success. Not until General ULYSSES S. GRANT emerged in 1863 as a strong and successful military leader did the Union army begin to achieve substantial victories. In 1864 Lincoln named Grant the commander of the Union army. In April 1865 General Robert E. Lee surrendered his Confederate army to Grant at Appomattox, Virginia, signaling the end of the war.

Lincoln fought the Civil War to preserve the Union, not to end slavery. Though he was personally opposed to slavery, he had been elected on a platform that pledged to allow slavery to remain where it already existed. However, wartime pressures drove Lincoln toward emancipation of the slaves. Military leaders argued that an enslaved labor force in the South allowed the Confederate states to place more soldiers on the front lines. By the summer of 1862, Lincoln had prepared an EMANCIPATION PROCLAMATION, but he did not want to issue it until the Union army had better fortune on the battlefield. Otherwise the proclamation might be seen as a sign of weakness.

The Union army's victory at Antietam encouraged the president to issue on

he had allegedly conspired. Instead, it is a primary piece of evidence to support the argument that Booth acted alone.

Booth's quick death with no trial left many in the nation questioning the circumstances surrounding the murder of the North's beloved leader. Federal investigators subsequently singled out eight Southern civilians who had, by varying accounts, associated with Booth at a boarding house in Maryland. The eight were held as prisoners, accused of assisting in the crime of the century. David Herold, Lewis Payne, George Atzerodt, Michael O'Laughlin, Samuel Arnold, Dr. Samuel Mudd, Edward Spangler, and Mary E. Surratt were charged as traitors and conspirators in a plot to kill Lincoln, VICE PRESIDENT ANDREW JOHNSON, SECRETARY OF STATE William H. Seward and General ULYSSES S. GRANT.

Lincoln's secretary of war, EDWIN M. STANTON, had conducted most of the criminal investigation. Based on the charges he developed, former Confederate President Jefferson Davis was directly implicated, but not tried, in the assassination plot. Stanton and Attorney General JAMES SPEED subsequently put together a nine man military commission of seven generals and two colonels from the Union Army to sit in judgment. All nine of the appointed officers were staunch Republicans.

In the trial of the suspects, the prosecution relied heavily on the testimony of one individual in particular, Louis Weichmann. Weichmann had been closely acquainted with most of the conspirators and had first learned of their plot, according to his testimony, at a Maryland boarding house run by Mary Surratt. The accounts Weichmann gave primarily implicated Surratt and a country doctor, Samuel Mudd. The defense noted that Weichmann had not reported any of the alleged activity at the boarding house until after the assassination. However, the evidence to which Weichmann led investigators, particularly a boot of Booth's with the inscription "J. Wilkes," found at the home of Dr. Mudd, appeared to seal the fate of the eight defendants.

On June 29 the commission met behind closed doors to consider the evidence. They deliberated for two days and then sentenced four prisoners to death and four to imprisonment and hard labor. On July 7 Surratt was the first to be led to the gallows. Atzerodt, Herold, and Payne also received the death penalty.

Though four people were sent to their deaths and four to prison for the crime, historians continue to debate the conspiracy to kill Lincoln. One book that stirred much discussion on the subject was Otto Eisenschiml's *Why Was Lincoln Murdered?*, published in 1937. Eisenschiml postulated that Stanton and a group of Northern industrialists plotted the death of Lincoln to secure the interests of radical Republicans who were bent on the takeover of the newly restored Union. That theory, however, has been largely rebutted by other historians.

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September 22, 1862, a preliminary proclamation that slavery was to be abolished in areas occupied by the Confederacy effective January 1, 1863. The wording of the Emancipation Proclamation on that date made clear that slavery was still to be tolerated in the border states and areas occupied by Union troops, so as not to jeopardize the war effort. Lincoln was uncertain that the U.S. Supreme Court would uphold the constitutionality of his action, so he lobbied Congress to adopt the THIRTEENTH AMENDMENT, which totally abolished slavery.

Lincoln's writing and speaking skills played a vital part in maintaining the resolve of the Northern states during the war and in preparing the nation for the aftermath of the war. In 1863, at Gettysburg, Pennsylvania, Lincoln delivered his poignant Gettysburg Address at the dedication of a national cemetery for soldiers who had died at the bloody battleground. The speech summarized the tragic and human aspects of Gettysburg and distilled Lincoln's resolve to protect the Union. At his second inauguration, in March 1865, Lincoln reached out to the South as the end of the war approached. He proclaimed, "With malice toward none; with charity for all."

Even before the war ended, Lincoln began to formulate a plan for RECONSTRUCTION, which included the restoration of Southern state governments and the amnesty of Confederate officials who vowed loyalty to the Union. These proposals met fierce opposition in Congress, as the Radical Republicans sought harsher treatment for the South and its supporters.

The war ended on April 9, 1865, but Lincoln did not have a chance to fight for his Reconstruction proposals. He was shot in the head on April 14 by John Wilkes Booth during the performance of a play at Ford's Theatre, in Washington, D.C. He died the next day. After lying in state in the Capitol, his body was returned to Springfield for burial.

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"Emancipation Proclamation," "Gettysburg Address," "House Divided Speech," and "Second Inaugural Address" (Appendix, Primary Documents).

[THE PRESIDENT] IS ACCOUNTABLE ONLY TO HIS COUNTRY... AND TO HIS CONSCIENCE. TO AID HIM IN THE PERFORMANCE OF THESE DUTIES, HE IS AUTHORIZED TO APPOINT CERTAIN OFFICERS, WHO ACT BY HIS AUTHORITY AND IN CONFORMITY WITH HIS ORDER. IN SUCH CASES THEIR ACTS ARE HIS ACTS.
—LEVI LINCOLN

v LINCOLN, LEVI

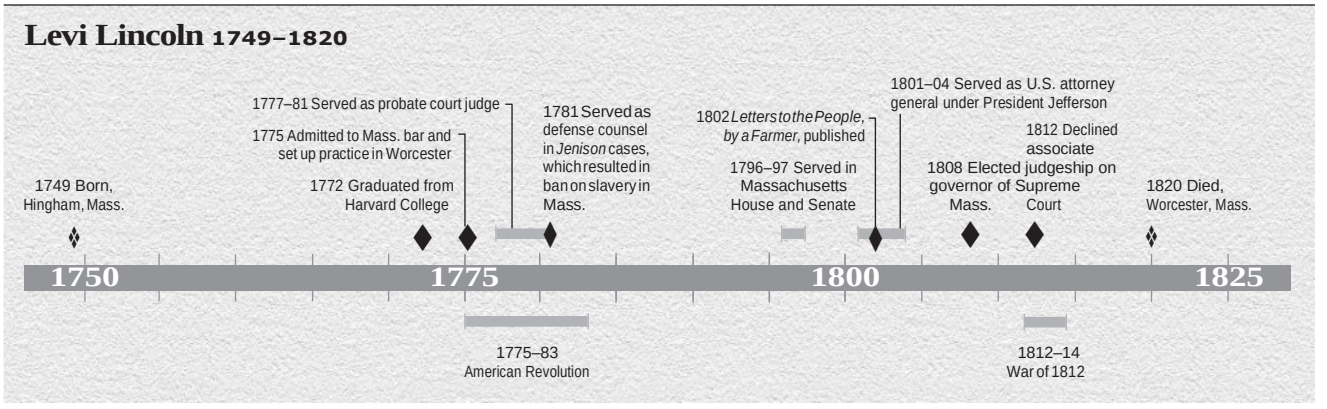
Levi Lincoln was a U.S. attorney general under President THOMAS JEFFERSON. He held various political posts, including that of sixth governor of Massachusetts. He was among the creators of the first state constitution. As a trial lawyer, Lincoln was involved in a set of landmark cases in the struggle against SLAVERY. He was also the father of Massachusetts statesman and state supreme court justice Levi Lincoln, Jr. (1782–1868).

Lincoln was born May 15, 1749, in Hingham, Massachusetts. His father was a farmer, and as a youth Lincoln was apprenticed to a blacksmith. However, because Lincoln was an avid student, his father allowed him to continue studying in preparation for college. His initial studies were in theology, but after hearing JOHN ADAMS argue a case in Boston, his interests turned to law.

Lincoln graduated from Harvard in 1772 and then worked in the office of Joseph Hawley, in Northampton, Massachusetts. Until the outbreak of the Revolutionary War, he was active in politics and a prominent figure in the Massachusetts movement to abolish slavery. After the Battle of Lexington, in 1775, he traveled with the militia for a brief period before moving to Worcester, Massachusetts. He was admitted to the bar in 1775 and set up his law practice in Worcester, where he remained a resident for the rest of his life.

Lincoln quickly became prominent as a successful trial lawyer and served in various civil offices during the years of the Revolutionary War. In 1775 he was a state court judge, and from 1777 to 1781 he was a probate court judge. In 1779 Lincoln was a delegate to the Massachusetts state constitutional convention, which drew up the first state constitution. In 1781 he married Martha Waldo, with whom he had nine children.

Also in 1781 Lincoln served as a defense counsel in three cases concerning the question



of the right to hold slaves. The cases—*Walker v. Jenison, Jenison v. Caldwell*, and *Commonwealth v. Jenison*—addressed the issue of slavery in light of the BILL OF RIGHTS in the 1780 Massachusetts Constitution. Lincoln and co–defense counsel Caleb Strong argued against the legality of slavery in Massachusetts. Their position prevailed, and slavery was made illegal in the state.

Lincoln, a leading Republican, became a key adviser to President Jefferson on matters of Federalist-Republican logistics and diplomacy, specifically regarding introducing laws or policies likely to be unpopular in New England.

Lincoln served in the Massachusetts state House of Representatives in 1796 and was a state senator the following year. From 1800 to 1801, he was a member of the U.S. Congress.

Lincoln served as U.S. attorney general under President Jefferson from 1801 to 1804. Early in his term, he also fulfilled the duties of SECRETARY OF STATE, because personal illness and a death in the family delayed the arrival in Washington, D.C., of secretary of state appointee JAMES MADISON.

As attorney general Lincoln was one of two men to whom Jefferson frequently turned for advice regarding his New England constituency; the other was Postmaster General Gideon Granger. For example, Jefferson, a rigid secularist, drafted a letter of support in response to an appeal from a minority group in Connecticut known as the Danbury Baptists, who were seeking stronger church-state separation in their state. Jefferson's draft declared that because of the Constitution's FIRST AMENDMENT prohibitions, a "wall of separation" had been built between church and state. The draft also noted that because of this strong separation, Jefferson refrained from prescribing "even occasional performances of devotion," such as days of fasting or thanksgiving, as his predecessors had done. Before releasing the paper, Jefferson asked the advice of both Granger and Lincoln. Granger proposed leaving the draft as it was written. Lincoln argued that the phrase regarding days of thanksgiving might anger the eastern states because their governors frequently proclaimed such days. Based on Lincoln's advice, Jefferson removed the phrase.

Because of his Republican partisanship, Lincoln was the subject of frequent criticism by Federalist newspapers and clergy representatives. His book *Letters to the People, by a Farmer*, published in 1802, in which he attacked the political role of the clergy, was written in response to this criticism.

Lincoln resigned his post as attorney general in 1805 and resumed his political career in Massachusetts. In 1807 he served as lieutenant governor of Massachusetts. The following year he was elected governor. He was on the governor's council in 1806 and from 1810 to 1812. In 1812 he was offered a position in the U.S. Supreme Court, which he refused because of failing eyesight. In recommending Lincoln for the position to President Madison, Jefferson called Lincoln a highly desirable appointee because of his legal abilities, his integrity, and his unimpeachable character.

Lincoln spent the rest of his life on his farm in Worcester. He died there April 14, 1820.

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Massachusetts Constitution of 1780.

v LINCOLN, ROBERT TODD

Robert Todd Lincoln was a lawyer, a presidential elector for the Illinois branch of the REPUBLICAN PARTY in 1880, secretary of war in the cabinets of Presidents JAMES GARFIELD and CHESTER A. ARTHUR, U.S. minister to Great Britain from 1889 to 1893, president and chairman of the board for the Illinois-based Pullman Palace Car Company, and the son of President ABRAHAM LINCOLN.

Lincoln was born August 1, 1843, in Springfield, Illinois. At the age of 13, he began attending classes at Illinois State University. Lincoln subsequently enrolled in the Phillips Exeter Academy, a prominent preparatory school, and then attended Harvard. His years there were concurrent with his father's presidency, between 1861 and 1865.

Robert Todd Lincoln.
LIBRARY OF CONGRESS

Lincoln graduated from Harvard on July 20, 1864, and in September of that year he enrolled in Harvard Law School. He then opted to enlist in the army. On February 11, 1865, Lincoln was appointed captain and assistant adjutant general of Union Army Volunteers. In his service, he witnessed the surrender of General Robert E. Lee at Appomattox, Virginia, on April 9, 1865.

In the 1880 presidential election, Lincoln was active on behalf of the Republican Party. He supported Ulysses S. Grant's attempt to win the presidency for a third time and was chosen to be a presidential elector. James Garfield won the presidency that year. Garfield respected Lincoln's political abilities and on March 5, 1881 appointed him secretary of war.

UNDERSTAND THAT I STILL DO NOT LIKE THE 'HONEST ABE' BUSINESS AT ALL, BUT I AM ACTING ON THE UNDERSTANDING THAT THERE IS NO ESCAPE FROM THAT PART OF IT.
—ROBERT TODD LINCOLN

In 1881 a disappointed office seeker shot President Garfield. Garfield died from his wound in September of that year, and Chester A. Arthur became president. Lincoln continued in his cabinet duties until March 1885. By then he had re-emerged as a possible Republican candidate for president. However, this was not a position in which Lincoln had a great interest, and ultimately he did not run for the office.

Lincoln nevertheless continued to serve in important federal positions. In 1889 he served as minister to Great Britain. In 1892 his name was discussed for a final time as a potential nominee for president. Lincoln appeared more interested in resuming his work as a lawyer, however.

Lincoln returned to private life, serving as president of the Pullman Palace Car Company until 1911, and then as the chairman of its board. In the ensuing years, his health began to fail, and he made few public appearances. He saw the dedication of the Lincoln Memorial on May 30, 1922, but he declined to speak.

Lincoln died in his sleep at the family estate in Hildene, Vermont, where he was found by his butler on July 26, 1926. His remains were moved from Manchester, Vermont, to Arlington National Cemetery, outside of Washington, D.C., in 1928.

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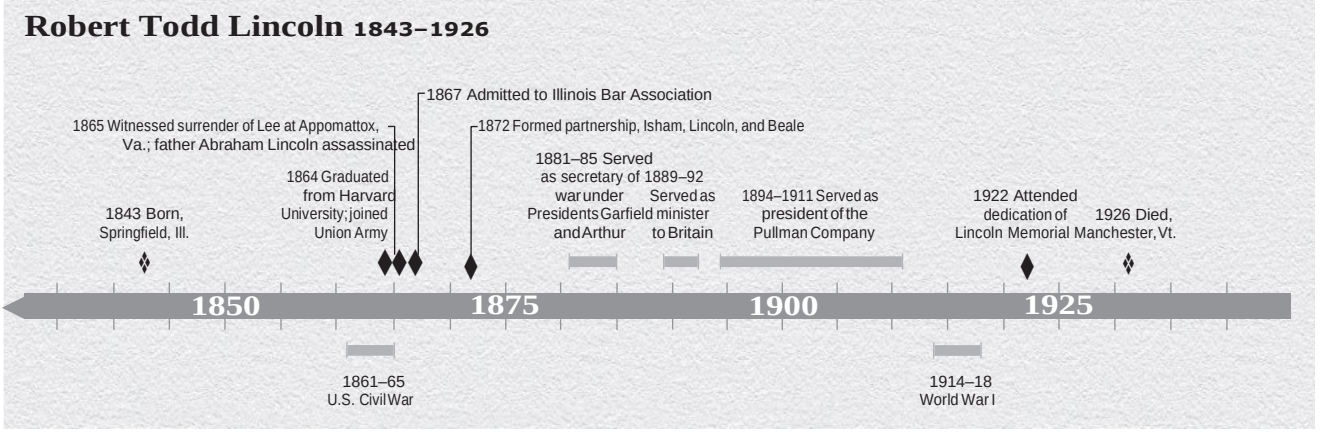

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LINDBERGH ACT

The LINDBERGH ACT is a federal law (48 Stat. 781) that makes it a crime to kidnap—for ransom, reward, or otherwise—and transport a victim from one state to another or to a foreign country, except in the case of a minor abducted by his or her parent.

The Lindbergh law provides that if the victim is not released within 24 hours after being kidnapped, there is a REBUTTABLE PRESUMPTION that he or she has been transported in interstate or foreign commerce. The punishment for violation of the Lindbergh Act is imprisonment for a term of years or for life.

CROSS REFERENCES

Kidnapping; Lindbergh Kidnapping.

LINDBERGH KIDNAPPING

The kidnapping of Charles A. and Anne M. Lindbergh's twenty-month-old son horrified the United States, and even the world. In 1927, at age 25, Lindbergh achieved international fame with the first solo crossing of the Atlantic Ocean by air, and in the bleak years of the late 1920s, the young aviator became a symbol of courage and success. The disappearance of Charles Augustus Lindbergh, Jr., on March 1, 1932, and the discovery of his corpse ten weeks later, led to a riotous trial, significant changes in federal law, and a tightening of courtroom rules regarding cameras.

Lindbergh's historic flight from New York to Paris in *The Spirit of St. Louis* brought him both adulation and wealth. By the end of 1930, he was estimated to be worth over $1.5 million. His was an enviable life, with more than enough justifications for the nickname Lucky Lindy: world fame; the Congressional Medal of Honor; foreign nations sponsoring his long-distance flights; positions with several airlines; a publishing career; and, in 1929, MARRIAGE to the daughter of the U.S. ambassador to Mexico, the writer Anne Spencer Morrow. The couple made their home in New Jersey, where their first child, Charles, Jr., was born in 1930.

In the context of 1930s crime, the kidnapping of Charles Jr. was not unique. But because he was the Lindberghs' son, his disappearance provoked weeks of well-publicized agonizing. Lindbergh led the search effort and even negotiated with ORGANIZED CRIME figures. All hopes ended when the child's body was found near the family estate.

Nearly two years passed before Bruno Richard Hauptmann, a carpenter, was arrested as the prime suspect in the murder. Hauptmann's trial, held between 1934 and 1935, was a sensation. Nearly 700 reporters and photographers flocked to the New Jersey town that was the site of the trial. Inside the courtroom, where flashbulbs popped and a concealed newsreel camera whirred, order was seldom possible. Equally beset were the Lindberghs themselves, and Charles Lindbergh, despite his fame, developed a hatred for the media. After Hauptmann was convicted and, in 1936, executed, the couple left the United States to live in England.

The AMERICAN BAR ASSOCIATION (ABA) viewed the trial as a media circus and called for reform. In 1937 the ABA included a PROHIBITION on courtroom photography in its Canons of Professional and Judicial Ethics. All but two states adopted the ban, and the U.S. Congress amended the Federal Rules of CRIMINAL PROCEDURE to ban cameras and broadcasting from federal courts. The ban on photography in courtrooms prompted by the trial would last nearly four decades.

Another important result of the kidnapping was the passage of the 1932 Federal Kidnapping Act (U.S.C.A. §§ 1201–1202 [1988 & Supp. 1992]), popularly called the Lindbergh Law. This statute made it a federal offense to kidnap someone with the intent to seek a ransom or reward. The law has since been modified several times not only to increase penalties but to make the investigative work of federal agents easier.

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CROSS REFERENCE

Cameras in Court.

v LINDSEY, BENJAMIN BARR

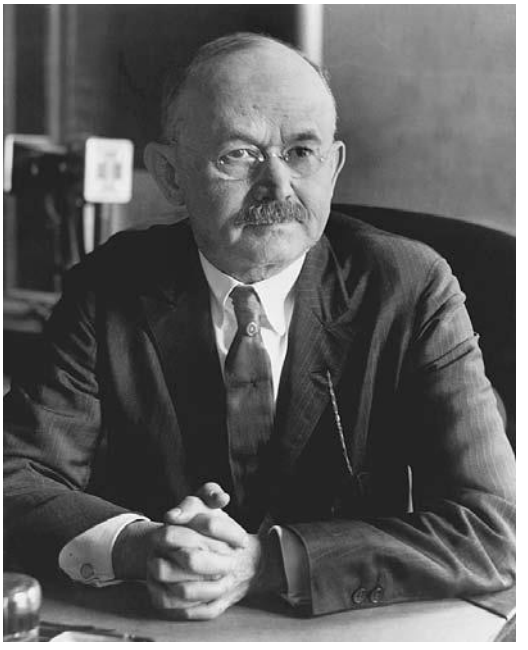
Benjamin Barr Lindsey achieved prominence for his work in the juvenile court. Lindsey was born November 25, 1869, in Jackson, Tennessee. He received honorary degrees from the University of Denver and Notre Dame University and was admitted to the bar in 1894. In 1928 he was also admitted to the California bar.

In 1900 Lindsey became judge of the juvenile court of Denver, remaining on the bench until 1927. He is credited with the founding of the juvenile court system in the United States. Many of his ideas were adopted internationally.

As a recognized expert in the field of juvenile delinquency, Lindsey initiated many successful programs concerned with rehabilitation of minors. For example, he introduced the honor system, first used at the Industrial School in Golden, Colorado, which allowed boys the freedom to be unattended. Out of several hundred boys there, only five did not adhere to the code of honor. He was also instrumental in the enactment of legislation in Colorado that recognized the negligence of parents as a contributory factor to the delinquency of juveniles.

In 1928 Lindsey moved to California where, in 1934, he sat on the bench of the superior court. In 1939 he became the first judge of the California Children's Court of Conciliation, a court he helped to create.

Lindsey was the author of many publications, including: *Problems of the Children* (1903); *The Beast and the Jungle* (1910); *The Revolt of Modern Youth* (1925); *The Companionate Marriage* (1927); and *The Dangerous Life* (a 1931 autobiography). He died March 26, 1943, in Los Angeles, California.



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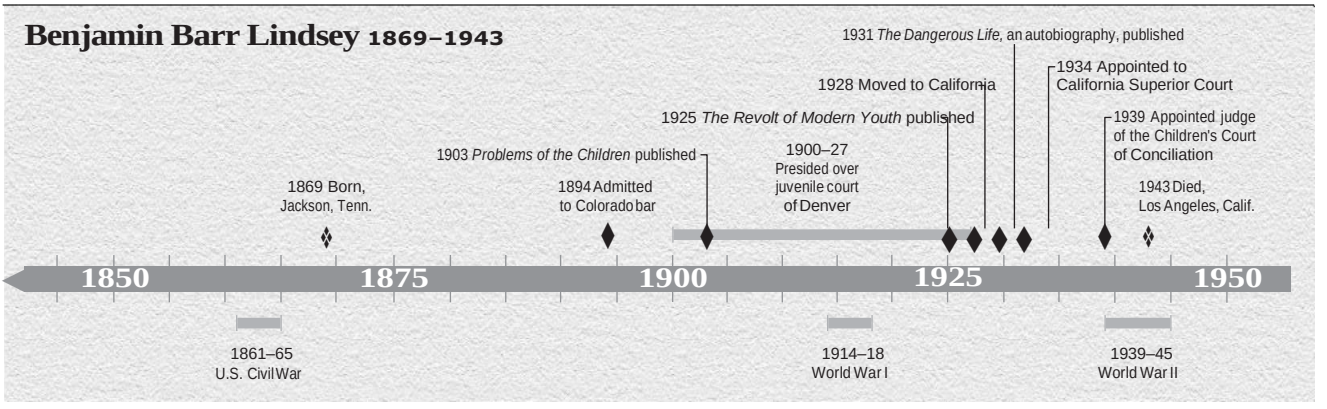

LINE OF CREDIT

The maximum borrowing power granted to a person from a financial institution.

Line of credit denotes a limit of credit extended by a bank to a customer, who can avail himself or herself of its full extent in dealing with the bank but cannot exceed this limit. It most frequently covers a series of transactions, in which case, when the customer's line of credit is nearly exhausted or not replenished, the customer is expected to reduce the indebtedness by submitting payments to the bank before making additional use of the line of credit.

LINEAL

That which comes in a line, particularly a direct line, as from parent to child or grandparent to grandchild.

LINEUP

A criminal investigation technique in which the police arrange a number of individuals in a row before a witness to a crime and ask the witness to identify which, if any, of the individuals committed the crime.

In a police lineup, a witness to a crime, who may be the victim, observes a group of individuals that may or may not include a suspect in the crime. The witness is not visible to those in the lineup. The witness is asked to identify which, if any, of the individuals committed the crime. A lineup places greater demands on the memory of the witness than does a viewing of a single suspect, and is believed to reduce the chances of a false identification. For example, assume a witness saw a man with a beard and a cap run across an alley near a crime scene. If the police show this witness one man who has a beard and a cap, the witness might make a positive identification. If they instead show the witness several men with a beard and a cap, the witness must make a more detailed identification and may not identify the same man.

In *Schmerber v. California,* 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966), the U.S. Supreme Court held that the FIFTH AMENDMENT constitutional privilege against self-incrimination—the right not to be made a witness against oneself in a criminal case—does not apply to appearance in lineups. That privilege, held the Court, protects accused people only from being compelled to testify against themselves or to otherwise provide the state with evidence of a testimonial or communicative nature.

The Constitution does afford an accused individual the RIGHT TO COUNSEL at a post-indictment lineup, and the right not to have testimony from a suggestive lineup admitted at trial. The constitutional right to the presence OF COUNSEL at a lineup or for counsel to receive notice of a lineup attaches, or becomes available, when a formal charge, indictment, PRELIMINARY HEARING, or arraignment is issued or conducted. Post-indictment lineups are considered a critical part of proceedings because the filing of a charge initiates adversary proceedings, triggering the right to counsel (*United States v. Wade*, 388 U.S. 218, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 [1967]). Counsel observes the lineup to decide whether to offer information about it during trial in order to cast doubt on an in-court identification. (In an in-court identification, the prosecution asks the witness whether he or she identified anyone in a lineup prior to trial and if so, whether that person is present in the courtroom.) According to *Wade*, an "intelligent waiver" of counsel and of notice to counsel may be made by the accused.

Police lineups that are conducted prior to the filing of a formal charge or the issuance of an indictment are not regarded as occurring at a critical stage of a criminal proceeding and do not require the presence of counsel.

The Due Process Clause of the Constitution requires that a lineup not be unduly suggestive or conducive to irreparable mistaken identification. An unduly suggestive lineup might be one in which the defendant was the only female. Some characteristics that courts have considered in determining suggestiveness is whether the others in the lineup were of similar age, skin coloration, and physical characteristics such as height and weight.

Courts examine on a case-by-case basis the question of whether a lineup was unduly suggestive or created a likelihood of misidentification. In making this determination, they look at the "totality of circumstances." The totality-of-circumstances test was announced by the Supreme Court in *Manson v. Brathwaite,* 432 U.S. 98, 97 S. Ct. 2243, 53 L. Ed. 2d 140 (1977). This test considers whether the witness or victim had an opportunity to observe the criminal at the time of the crime; the accuracy of the prior description of the accused as well as the degree of attention given to that description;

the level of certainty demonstrated by the victim or witness at the confrontation; and the length of time between the crime and the confrontation. Generally, if the court finds that a lineup violated due process, testimony as to the fact of identification is inadmissible. If the lineup complied with constitutional standards, a person who has identified the defendant in the lineup can testify to that fact at trial.

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CROSS REFERENCES

Criminal Law; Criminal Procedure; Due Process of Law.

LIQUID ASSETS

Cash, or property immediately convertible to cash, such as securities, notes, life insurance policies with cash surrender values, U.S. savings bonds, or an account receivable.

Although the ownership of real property is considered an asset, it is not a liquid asset because it cannot be readily converted into cash upon sale.

LIQUIDATE

To pay and settle the amount of a debt; to convert assets to cash; to aggregate the assets of an insolvent enterprise and calculate its liabilities in order to settle with the debtors and the creditors and apportion the remaining assets, if any, among the stockholders or owners of the corporation.

LIQUIDATED DAMAGES

Monetary compensation for a loss, detriment, or injury to a person or a person's rights or property, awarded by a court judgment or by a contract stipulation regarding breach of contract.

Generally, contracts that involve the exchange of money or the promise of performance have a liquidated damages STIPULATION. The purpose of this stipulation is to establish a predetermined sum that must be paid if a party fails to perform as promised.

Damages can be liquidated in a contract only if (1) the injury is either "uncertain" or "difficult to quantify"; (2) the amount is reasonable and considers the actual or anticipated harm caused by the contract breach, the difficulty of proving the loss, and the difficulty of finding another, adequate remedy; and (3) the damages are structured to function as damages, not as a penalty. If these criteria are not met, a liquidated damages clause will be void.

The *American Law Reports* annotation on liquidated damages states, "Damages for breach by either party may be liquidated in the agreement but only at an amount that is reasonable in light of the anticipated or actual harm caused by the breach.... A term fixing unreasonably large liquidated damages is unenforceable on grounds of PUBLIC POLICY as a penalty" (12 A.L.R. 4th 891, 899).

A penalty is a sum that is disproportionate to the actual harm. It serves as a punishment or as a deterrent against the breach of a contract. Penalties are granted when it is found that the stipulations of a contract have not been met. For example, a builder who does not meet his or her schedule may have to pay a penalty. Liquidated damages, on the other hand, are an amount estimated to equal the extent of injury that may occur if the contract is breached. These damages are determined when a contract is drawn up, and serve as protection for both parties that have entered the contract, whether they are a buyer and a seller, an employer and an employee or other similar parties.

The principle of requiring payments to represent damages rather than penalties goes back to the EQUITY courts, where its purpose was to protect parties from making unconscionable bargains or overreaching their boundaries. Today section 2-718(1) of the UNIFORM COMMERCIAL CODE deals with the difference between a valid liquidated damages clause and an invalid penalty clause.

Liquidated damages clauses possess several contractual advantages. First, they establish some predictability involving costs, so that parties can balance the cost of anticipated performance against the cost of a breach. In this way liquidated damages serve as a source of limited insurance for both parties. Another

contractual advantage of liquidated damages clauses is that the parties each have the opportunity to settle on a sum that is mutually agreeable, rather than leaving that decision up to the courts and adding the costs of time and legal fees.

Liquidated damages clauses are commonly used in REAL ESTATE contracts. For buyers, liquidated damage clauses limit their loss if they default. For sellers, they provide a preset amount, usually the buyer's deposit money, in a timely manner if the buyer defaults.

The use and enforcement of liquidated damages clauses have changed over the years. For example, cases such as *Colonial at Lynnfield v. Sloan*, 870 F.2d 761 (1st Cir. 1989), and *Shapiro v. Grinspoon,* 27 Mass. App. Ct. 596, 541 N. E. 2d 359, 1989), have granted courts permission to compare the amount set forth in the liquidated damages provision against the actual damages caused by a breach of contract. These "second-look" rulings have led several courts to honor the liquidated damages clauses only if they are equal to, or almost equal to, the actual damages.

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LIQUIDATION

The collection of assets belonging to a debtor to be applied to the discharge of his or her outstanding debts.

A type of proceeding pursuant to federal BANKRUPTCY *law by which certain property of a debtor is taken into custody by a trustee to be sold, the proceeds to be distributed to the debtor's creditors in satisfaction of their claims.*

The settlement of the financial affairs of a business or individual through the sale of all assets and the distribution of the proceeds to creditors, heirs, or other parties with a legal claim.

The liquidation of a corporation is not the same as its dissolution (the termination of its existence as a legal entity). Depending upon statute, liquidation can precede or follow dissolution.

When a corporation undergoes liquidation, the money received by stockholders IN LIEU OF their stock is usually treated as a sale or exchange of the stock resulting in its treatment as a capital gain or loss for INCOME TAX purposes.

LIQUORMART V. RHODE ISLAND

The U.S. Supreme Court has stringently LIMITED government regulation of noncommercial expression, citing the First Amendment's guarantee of freedom of expression. Before the mid-1970s, however, the Court regarded the regulation of commercial speech as simply an aspect of economic regulation, entitled to no special FIRST AMENDMENT protection. After that time the Court made it more difficult for government to restrict advertising. In *44 Liquormart v. Rhode Island*, 517 U.S. 484, 116 S. Ct. 1495, 134 L. Ed. 2d 711 (1996), the Court ruled that the state of Rhode Island could not prohibit the public advertising of liquor prices, as doing so would abridge the liquor retailer's right to FREEDOM OF SPEECH. After *Liquormart* the ability of the government to restrict truthful, nondeceptive advertising was extremely limited.

Commercial speech is a broad category including but not limited to the advertising of services and products. The constitutional protection of commercial expression emerged in the 1970s, when the Supreme Court struck down state laws that banned the advertising of ABORTION services, prescription drug prices, and attorneys' fees. Constitutional expression was not considered absolute, and the Court allowed reasonable regulation to prevent FRAUD and deception.

A standard was first set in *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 100 S. Ct. 2343, 65 L. Ed. 2d 341 (1980). In *Central Hudson* the Court noted that commercial speech serves the economic interests of the speaker but also helps consumers and society overall. It outlined a four-part test for judicial evaluation of the regulation of commercial speech. First, if the commercial speech is to receive FIRST AMENDMENT protection, the Court must determine that it concerns a lawful activity and is not misleading. Second, the Court must determine whether the asserted government interest is substantial. Third, if the answer to the second part of the test is yes, the Court must determine if the regulation directly advances the

asserted government interest. Fourth, the Court must decide if the regulation is more extensive than is necessary to serve that purpose.

Central Hudson represented a compromise between one approach that emphasized consumer protection and another that stressed a free marketplace of ideas. Only five justices fully joined in the MAJORITY opinion, and the viability of the test has been called into question. In *Posadas de Puerto Rico Associates v. Tourism Co. of Puerto Rico*, 478 U.S. 328, 106 S. Ct. 2698, 92 L. Ed. 2d 266 (1986), the Court upheld a law prohibiting advertisements inviting residents of Puerto Rico to gamble legally in local casinos. Justice WILLIAM H. REHNQUIST emphasized Puerto Rico's substantial interest in reducing the demand for casino gambling among its citizens and noted that the regulation at issue directly advanced this objective. In addition, he maintained that because the legislature could have banned all gambling by local residents, this legislative power included the lesser power to ban advertising of casino gambling. Justice JOHN PAUL STEVENS dissented, arguing that Puerto Rico had blatantly discriminated in punishing speech "depending on the publication, audience, and words employed."

The *Liquormart* case raised issues regarding the viability of both the *Central Hudson* test and the *Posadas* reasoning. In 1956 the Rhode Island legislature enacted laws that prohibited the public advertising of alcoholic beverages. Prices could be advertised only inside a licensed liquor retail establishment (R.I. Gen. Laws §§ 3–8–7, 3–8–8.1). 44 Liquormart, a Rhode Island retailer of alcoholic beverages, and the Rhode Island Liquor Stores Association challenged the law in 1993, alleging that the ban violated the First Amendment.

The state of Rhode Island argued that competitive pricing would lower prices and that lower prices would produce more sales, thus encouraging alcohol consumption. It claimed that under *Central Hudson* it had a substantial government interest in controlling the consumption of alcohol and in the laws that directly advance that interest. Apart from *Central Hudson*, the state asserted that under the TWENTY-FIRST AMENDMENT, which repealed the Eighteenth Amendment's prohibition on the sale of alcoholic beverages, the states were given the power to regulate the sale of alcohol, including the power to prohibit sales altogether. Citing *Posadas*, Rhode Island said it was in the same position as the Puerto Rican legislature. Because the state could prohibit the sale of alcohol, it could restrict liquor advertising.

Though the Supreme Court unanimously agreed that Rhode Island's laws on liquor advertising were an unconstitutional restraint on protected First Amendment expression, the Court split in its reasoning for the decision. Justice Stevens, with a shifting coalition of three to four justices in various sections of the opinion, moved away from the *Central Hudson* test, indicating concern about any test that might permit a total ban on truthful, noncoercive advertising. Stevens reasoned that such a ban "usually rest[s] solely on the offensive assumption that the public will respond 'irrationally' to the truth. The First Amendment directs us to be especially skeptical of regulations that seek to keep people in the dark for what the government perceives to be their own good."

Though skeptical about *Central Hudson,* Stevens applied its four-part test and found the state's position deficient. Stevens concluded that Rhode Island had failed to provide any evidence that its advertising restrictions significantly reduced the consumption of alcohol. The state could not prove that the ban "advanced the substantial state interest," and the ban was "more extensive than necessary" to address the issue of alcohol consumption. Stevens pointed out that the state's goal of promoting temperance could be achieved through "higher prices maintained either by direct regulation or by increased taxation." Educational campaigns against excessive use might produce better results. Any of these approaches would not infringe on First Amendment expression.

Stevens also dismissed Rhode Island's use of the *Posadas* case—a move that was not surprising in light of his vigorous dissent in that case. He stated that "*Posadas* clearly erred in concluding that it was 'up to the legislature' to choose suppression over a less speech-restrictive policy." Therefore, the Court declined to give force to its "highly deferential approach."

In addition, a unanimous Court rejected the state's argument that the Twenty-first Amendment tilted the First Amendment analysis in its favor. It ruled that the Twenty-first Amendment "does not qualify the constitutional prohibition against laws abridging the freedom of speech embodied in the First Amendment."

Justice CLARENCE THOMAS, in a concurring opinion, went further than the rest of the Court,

advocating that *Central Hudson* be discarded. In Thomas's view, the four-part balancing test had no role to play when "the government's asserted interest is to keep legal users of a product or service ignorant in order to manipulate their choices in the marketplace." According to Thomas such an interest is "*per se* illegitimate and can no more justify regulation of 'commercial' speech than it can justify regulation of 'noncommercial' speech."

On the other hand, Justice Sandra Day O'Connor, in a concurring opinion joined by three other justices, argued that the case could be resolved more narrowly by applying only the *Central Hudson* test. Applying the test O'Connor concluded that the law failed because it was more extensive than necessary to serve Rhode Island's interest.

The *Liquormart* decision revealed that the Court was divided over the question of whether *Central Hudson* is the right test to apply to commercial expression cases. It also demonstrated that the Court was fully committed to First Amendment protection of commercial expression. The practical result was that Rhode Island and other states with similar laws could not prohibit liquor advertising. The decision put in doubt whether existing and proposed prohibitions on tobacco advertising were constitutional.

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CROSS REFERENCES

Least Restrictive Means Test; Legal Advertising.

LIS PENDENS

[Latin, Pending lawsuit.] *A reference to the jurisdiction (or control) that courts obtain over property in a suit awaiting action.*

A notice filed in the office of public records that the ownership of real property is the subject of a legal controversy and that anyone who purchases it takes it subject to any claims asserted in the action and thereby its value might be diminished.

LISTING

An agreement that represents the right of a real estate agent or broker to handle the sale of real property and to receive a fee or commission for services.

There are various types of REAL ESTATE listings. A *general* or *open* listing is a right to sell that may be given to more than one agent or broker simultaneously. An *exclusive agency* listing is the right of one real estate agency to be the sole party, with the exception of the owner, who is permitted to sell the property during a particular period. Through an *exclusive authorization to sell* listing, one agency is given the sole authority to sell the property during a certain time period. The agency WILL receive a commission even if the owner finds the buyer during the time period.

A *multiple listing* takes place when an agent with an exclusive listing provides a number of members of a real estate association with information about the property and shares the commission with the agent who is able to find a buyer.

A *net listing* is an arrangement whereby the seller establishes a minimum price that will be taken for the property, and the agent's commission is the amount for which it sells above such minimum.

LITCHFIELD LAW SCHOOL

*The first law school in America, founded by Tapping Reeve (*b. *October 1744, in Southhold, Long Island, New York;* d. *December 13, 1823, in Litchfield, Connecticut) in 1784 in Litchfield, Connecticut. It continued operation until 1833.*

In 1778 Tapping Reeve, a young attorney recently admitted to the bar, settled in Litchfield to practice law. Born in Southhold, Long Island, New York, in 1744, the son of Reverend Abner Reeve, a Presbyterian minister, he graduated from Princeton College in 1763 and immediately taught at a grammar school affiliated with the college. He spent seven years in that position and as a tutor in the college itself. He then moved to Connecticut to study law, entering the office of Judge Elihu Root, who was at that time a practicing attorney in Hartford, and, subsequently, a judge of the Supreme Court. From

Hartford, he arrived in Litchfield, after marrying Sally Burr, daughter of President AARON BURR of Princeton and sister of Aaron Burr, the later VICE PRESIDENT.

Until the Revolutionary War ended, there was very little civil business transacted in Litchfield County, and Reeve provided legal instruction in anticipation of the conclusion of the war and the resumption of ordinary business matters. This employment augmented his legal knowledge and proficiency and enabled him to commence in 1784 a systematic course of instruction in the law, including regular classes.

The Litchfield Law School officially opened its doors to students in 1784 and continued in successful operation with annual graduating classes until 1833. Its catalog contained the names of 1,500 young men who prepared for the bar after 1798. Most graduates were admitted to the practice of law in the court at Litchfield. The roster of students prior to that date is inaccurate, but it is certain that there were at least 210. More than two-thirds of the students were from states other than Connecticut, with the original thirteen colonies amply represented. A lesser number of students came from states recently admitted to the Union. The greatest number who entered in any one year was 54 in 1813, when the law school apparently reached its zenith.

Prominent statesmen and politicians, such as Aaron Burr and JOHN C. CALHOUN, studied law at Litchfield. Two of its graduates, HENRY BALDWIN and LEVI WOODBURY, became Supreme Court justices. In addition, fifteen U.S. senators, fifty members of Congress, five cabinet members, ten governors, 44 judges of state and lower federal courts, and seven foreign ministers graduated from the school. Georgia had the greatest number of distinguished graduates.

The term of instruction at Litchfield was completed in 14 months, including two vacations (spring and fall) of four weeks each. No students could be admitted for a period shorter than three months. In 1828 tuition was $100 for the first year and $60 for the second year.

The curriculum covered the entire body of the law. Tapping Reeve's lectures referred to the law in general, with respect to the sources from which it is derived, such as customs or statutes, and analyzed the rules for the application and interpretation of each. Courses in REAL ESTATE, rights of persons, rights of things, contracts, torts, evidence, pleading, crimes, and EQUITY then followed. Each of these general subjects was treated under various SUBSIDIARY topics, in order to enhance the student's comprehension of the subject matter and its relation to the actual practice of law. Reeve administered the school alone until 1798, when, after his election to the Supreme Court, he invited James Gould to become his associate. They jointly operated the school until 1820, when Judge Reeve withdrew. Gould continued the classes until 1833, with the assistance of Jabez W. Huntington during the final year.

The Litchfield Law School afforded an intensive LEGAL EDUCATION because there were not as many different highly developed areas of law as there are today. In 1784, there were no printed reports of decisions of any court in the United States. The English reports contained nearly the entire body of the law. During the tenure of the law school, thecommon-law system of pleading became so encumbered by nuances and fictions that it fell into disfavor. The renowned Rules of Hilary Term were adopted in 1834 to rectify this situation. This development proved to be the forerunner of modern legal theories, such as the merger of law and equity and the desirability of short and plain statements of claims and defenses.

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LITERAL CONSTRUCTION

The determination by a court of the meaning of the language of a document by an examination of only the actual words used in it, without any consideration of the intent of the parties who signed the writing except for the fact that they chose the language now in dispute.

CROSS REFERENCE

Canons of Construction.

LITERARY PROPERTY

The interest of an author in an original and expressive composition, that entitles the author to

Should Biographers Be Allowed to Quote Unpublished Literary Property?

The protection of LITERARY PROPERTY by the federal copyright statute is intended to create economic incentives that induce authors to create and disseminate new works. A copyright is a reward to an author for making a contribution to society. Nevertheless, the author's copyright MONOPOLY is not unlimited. The doctrine of fair use permits other authors to copy or adapt limited amounts of the copyrighted material without infringing the copyright. Fair use allows someone other than the original author to make secondary use of a copyrighted work to create a new work. The creation of the new work is also viewed as a contribution to society.

The competing interests of copyright and fair use have generated conflict over the quotation of unpublished works, primarily letters, by literary biographers. The U.S. Court of Appeals for the Second Circuit's decision in *Salinger v. Random House*, 811 F.2d 90 (1987), concluded that biographers cannot invoke fair use when dealing with unpublished letters. Defenders of the decision assert that it allows authors to control material they do not want published. Critics argue that this restrictive view of fair use ignores the legitimate need of biographers, historians, and other scholars to mine rich sources of unpublished material and present their findings to the public.

Defenders of *Salinger* and its restrictions on the quotation of unpublished works note that the purpose and character of the use of unpublished material are one factor in determining fair use. For example, though a literary biography is a work of criticism and scholarship, biographical works are generally published by commercial, for-profit businesses. If previously unpublished material were used in such a book, the publisher would promote the book by emphasizing that it contained that material.

Because biographies are written for profit, supporters of restrictions argue, biographers should not be entitled to any special consideration in determining fair use. A biographer is free to read unpublished letters and extract their factual content, but copying their author's expression of particular facts is not, and should not be, permitted. The reader of the biography will still benefit from the new factual content. Therefore, it cannot be argued that banning the quotation of unpublished work defeats the advancement of knowledge and scholarship.

Supporters of restrictions further contend that unpublished works deserve heightened protection because their authors have not yet commercially exploited them. If a biographer could quote generous selections from a series of letters, the potential market for and value of these unpublished letters would likely decrease. Even if the author asserts that he has no intention of publishing the letters, the law should preserve the author's opportunity to sell the letters if a change of mind occurs. The author's copyright must be protected to allow the author the first chance to reap an economic benefit.

Critics of *Salinger* and its reasoning point out that unpublished letters are usually "public," having been donated by the recipient to an academic or research library for scholarly use. It is unfair, charge the critics, to permit persons who can travel to an academic library holding the unpublished letters of a literary figure to read those letters, while denying the rest of the public the opportunity to learn more about the letter writer.

Authors who write letters know that they surrender ownership of them when they send them. Furthermore, authors do not write letters for financial gain; they write them as a simple form of communication with another individual. Critics of *Salinger* suggest that it should thus be fair use to quote from unpublished letters—while noting that it would not be fair use to quote from an unpublished novel or a short story without the author's permission, since such a work is generally written for economic exploitation.

Critics of the *Salinger* decision also argue that limiting biographers to reciting bland and brief digests of unpublished letters does not advance the public interest. They contend that the use of quotations is essential in literary biographies, where the biographer seeks to compare the public author and the private person. The comparison of expression between published works and letters can reveal consistency and contradiction. Further, the use of the subject's own thoughts and words demonstrates to the reader the complex relationship between art and life.

These critics also dismiss the conclusion that quotations from letters will diminish the MARKET VALUE of the letters for future publication. They point out that the publication of a literary biography generally sparks new interest in the subject and in the subject's works, including a collection of letters. Because of this response in academe and the marketplace, critics contend that the biographer actually enhances the status of the subject.

Critics also hold that the *Salinger* decision is motivated by privacy concerns. They note that if the author of unpublished letters does not wish to permit a biographer to investigate her life, a denial of permission to quote from the letters is an effective way of maintaining privacy. Critics are more troubled by grants of permission to quote that are accompanied by the requirement that the manuscript cannot be published without approval of the subject. Critics maintain that a subject's power to control the content of a book is antithetical to the promotion of scholarship and to the public purposes of copyright.

CROSS REFERENCE

Privacy.

the exclusive use and profit thereof, with no interest vested in any other individual. The corporal property in which an intellectual production is embodied.

The concept of literature as property grew from the notion that literary works have value, and that writers deserve legal protection from unauthorized use of their work by others. Before the fifteenth century, writing generally was an activity performed for royalty and organized RELIGION, and literature was not considered a commodity. With the invention of the printing press in the fifteenth century, along with a societal trend away from royal and religious control, literature came to be seen as an item of value that could be bought and sold.

As literature became a commodity, the law slowly moved to protect the economic interests of writers. In England the Statute of Anne was passed by Parliament in 1710 to limit the MONOPOLY of rights that publishers held over writers. Similar copyright laws migrated to the American colonies, and comprehensive federal copyright statutes now regulate the right to own and sell LITERARY PROPERTY in the United States. In the absence of an agreement to the contrary, copyrights to literary property now vest automatically in the author as soon as the work is affixed to a TANGIBLE medium.

A precise definition of literary property is elusive. According to Eaton S. Drone, an influential nineteenth-century TREATISE writer, there is no literary property

> in thoughts, conceptions, ideas, sentiments, etc., apart from their association.... their arrangement and combination in a definite form constitute an intellectual production, a literary composition, which has a distinct being capable of identification and separate ownership, and possessing the essential attributes of property. The property is not in the simple thoughts, ideas, etc., but in what is produced by their association. (*A Treatise on the Law of Property in Intellectual Productions in Great Britain and the United States* [1879])

Ultimately, lawmakers have left the job of determining what constitutes literary property to the courts, which have fashioned some general guidelines.

Not all literature qualifies as literary property. Furthermore, not all the content in a piece of literary property can receive protection from copying or use by other authors. Only the original expressive content of a piece of literature qualifies as literary property.

Mere ideas generally do not constitute literary property. For example, the idea of writing a novel set in Okefenokee Swamp, in Georgia, is not literary property. But if a person writes such a novel, the expressive content of the novel is literary property, and the author owns the rights to that property. After the novel is published and sold, another person may write a book set in Okefenokee Swamp. However, the writer of the second book may not use the original expressions, characters, and sequence of events created by the author of the first book.

No bright line distinguishes protected and unprotected characters and story lines. Rather, courts place these elements on a continuum from simple to complex. On this continuum general qualities and emotional features do not receive copyright protection. However, the more a character or story is developed, the more it comes to constitute literary property, and the more copyright protection it receives.

A determination of copyright INFRINGEMENT also can depend on the degree of similarity between the literary property and subsequent literary works. For example, assume that a novelist has developed a character named Hijinks, a lovable pool cleaner who moonlights as a private detective and drinks only papaya juice. This is a well-defined character, so it is the property of the novelist and no one may copy it without permission. If a second author writes and sells a book that features a private detective who cleans pools part-time, this would probably not be sufficient borrowing of an original expression to constitute copyright infringement. The second author may even give the pool-cleaning private eye a penchant for fruit juice and be safe from suit. However, if the second author's main character is a papaya-juice drinking, pool-cleaning private detective named Hijinks, a judge or jury could find infringement and award damages to the first author.

Before 1976 the term *literary property* was used to describe the author's state of ownership prior to publication. When an author fixed a piece of literature in a tangible medium, such as on paper or on an audiotape, the author owned the work forever and could exclude others from using it forever. Once the author published the work, the work became governed by copyright laws, which granted exclusive rights to the author for a fixed term of years.

J.D. Salinger Biography

Biographers of living persons often encounter reluctant or hostile subjects. Such was the case for biographer Ian Hamilton, whose completed manuscript about novelist J. D. Salinger had to be rewritten because Hamilton had violated copyright law by quoting from Salinger's unpublished letters.

Salinger, the author of *The Catcher in the Rye* (1951) and several other acclaimed works, had lived reclusively since the early 1960s and did not publish any new works between 1965 and 1996. He zealously protected his privacy, creating an aura of mystery and helping to establish his status as a cult figure.

Hamilton, a noted literary biographer, tracked down and quoted from unpublished letters that Salinger had written between 1939 and 1961. As Hamilton's book containing those quotations neared publication, Salinger sued, noting that as the author of the letters he retained the right of publication. Hamilton then eliminated direct quotations but substituted extensive paraphrases that tracked the original language very closely.

The federal courts agreed with Salinger, holding that Hamilton could write about the factual content of the letters but that Salinger retained the letters' "expressive content." According to the courts, Hamilton's paraphrasing invaded Salinger's expressive content and formed a substantial part of Hamilton's manuscript (*Salinger v. Random House,* 811 F.2d 90 [2d Cir. 1987]). Hamilton was forced to rewrite his manuscript. In the end, the book, *In Search of J. D. Salinger* (1988), was as much about the legal case and the pursuit of Salinger as it was about the novelist's life.

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The effect of publication was eliminated by the Copyright Act of 1976, 17 U.S.C.A. § 101 et seq. Under this act all literary property is subject to STATUTORY provisions from the moment it is affixed in a tangible medium.

The term *literary property* also can describe the tangible instrument that contains the words of a literary work. Novels, short stories, poems, plays, essays, letters, lectures, sermons, and songs are some basic forms of literary property. They can be contained on any tangible medium, including audiotape, videotape, and paper.

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CROSS REFERENCE

Intellectual Property.

LITIGATION

An action brought in court to enforce a particular right. The act or process of bringing a lawsuit in and of itself; a judicial contest; any dispute.

When a person begins a civil lawsuit, the person enters into a process called litigation. Under the various rules of CIVIL PROCEDURE that govern actions in state and federal courts, litigation involves a series of steps that may lead to a court trial and ultimately a resolution of the matter.

Before a lawsuit is filed, the person contemplating the lawsuit (called the PLAINTIFF) typically demands that the person who caused the alleged injury (called the DEFENDANT) perform certain actions that will resolve the conflict. If the demand is refused or ignored, the plaintiff may start the lawsuit by serving copies of a SUMMONS and complaint on the defendant and filing the complaint with a civil trial court. The complaint must state the alleged injuries and attribute them to the defendant, and request money damages or equitable relief.

If the service of the complaint on the defendant does not result in a settlement of the issues, the plaintiff must begin the discovery process. This involves sending to the defendant written questions (called INTERROGATORIES) that seek information involving the dispute AT ISSUE. The plaintiff may DEPOSE the defendant and others concerning the issues, with the deposition recorded by a COURT REPORTER. The plaintiff may also request copies of documents for review. Once litigation commences the defendant is also permitted to use discovery to learn more about the plaintiff's case. The discovery process may be conducted in a matter of weeks, or it may take years, depending on the complexity of the case and the level of cooperation between the parties.

After discovery is completed, most courts require the parties to attend a settlement conference to determine if the case may be resolved before trial. If the parties are unable to reach a settlement, the litigation continues to trial. Near or on the day of trial, one or both parties often make settlement offers, in the hope of avoiding court proceedings (which are often costly and protracted). Litigation ends if a settlement is reached.

If the parties are still unable to resolve their differences, a trial is held. At trial both sides are permitted to introduce relevant evidence that will help to prove to the jury or the court the truth of their positions. If the plaintiff makes a convincing case, the defendant may seek to settle the case immediately. On the other hand, if the plaintiff presents a weak case, the defendant may ask the court to dismiss the case. If the trial proceeds to a conclusion, either the jury or the judge (if a jury trial was waived) must decide which party prevails.

If the defendant loses the lawsuit, the defendant may ask the court to throw out the jury VERDICT if the evidence did not WARRANT the decision, or the defendant may ask that the damages awarded to the plaintiff be reduced. The court has discretion to grant or refuse these kinds of requests.

Once a FINAL DECISION has been made at the trial court, the losing party may APPEAL the decision within a specified period of time. The federal courts and the states have intermediate courts of appeal that hear most civil appeals. The appellate court reviews the arguments of the parties on appeal and determines whether the trial court conducted the proceedings correctly. Once the APPELLATE court issues a decision, usually in opinion form, the losing party may appeal to the state supreme court if the litigation occurred in a state court, or to the U.S. Supreme Court if the litigation occurred in a federal court. After the supreme court rules on the case, the decision is final.

Once a decision is final, litigation ends. The PREVAILING PARTY is then given the authority to collect damages or receive other remedies from the losing party. After the losing party provides the relief, that party is entitled to receive from the prevailing party a satisfaction of judgment, which is filed with the trial court. This document attests to the satisfaction of all court-imposed relief and signifies the end of the case.

v LITTLE-COLLINS, ELLA LEE

Ella Lee Little-Collins (Muslim name Alziz A. Hamid) was the half sister of Malcolm X, who credited her with playing a major role in his life. She supported the black revolutionary leader both emotionally and financially throughout his short but highly influential life. Malcolm lived with Little-Collins, who served essentially as a surrogate mother for him, off and on from 1940 until 1946, a period that left an indelible imprint on him. Little-Collins also sponsored Malcolm in his pilgrimage to Mecca in the early 1960s—another important, formative period of his life.

Though Malcolm credited Little-Collins for being only a positive influence in his life, at least one of his biographers suggests that she was a negative influence as well, asserting that she taught Malcolm his lifestyle of petty thievery. And Malcolm's widow, Betty Shabazz, has stated that she had no respect for Little-Collins because of her poor influence on Malcolm. Little-Collins did not dispute that she had many run-ins with the law, resulting in ten convictions for offenses including petty LARCENY and ASSAULT AND BATTERY. But Little-Collins's family asserts the run-ins occurred when she was defending others who were being harassed or taken advantage of by people in positions of authority. Little-Collins emerges as a major figure in Malcolm's life, one of few people who knew him and remained by his side throughout all of his many philosophical incarnations.

Little-Collins was born December 4, 1912, in Butler, Georgia, the eldest of three children of the Reverend Earl Lee Little and his first wife,

Daisy Mason. Her parents had two more children, Mary and Earl, Jr., and divorced in 1917 or 1918. Little-Collins's mother moved to Boston around 1920, taking Earl Jr. with her. Ella and Mary were left in Butler, Georgia, with Earl Sr.'s parents, John and Ella Little, who raised them to adulthood.

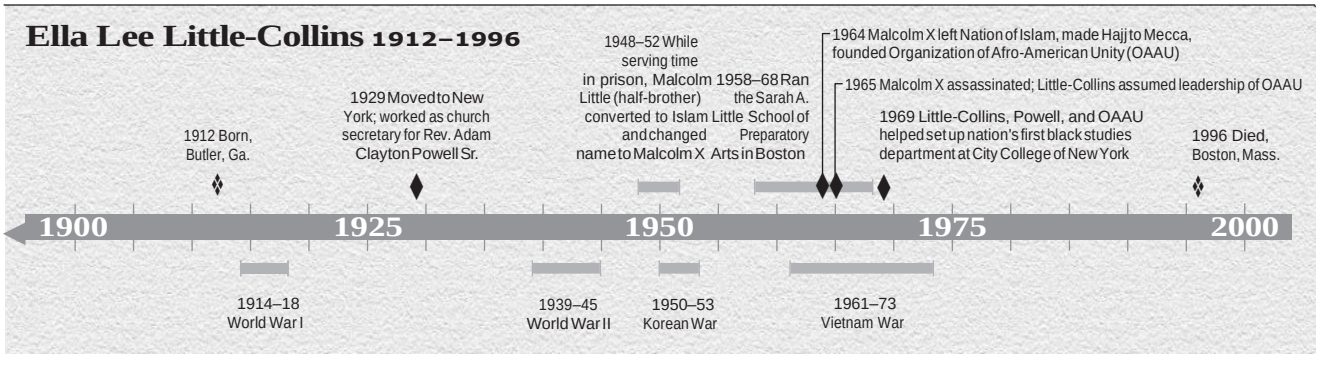
Little-Collins left Georgia in 1929 with very little to her name, and went to New York to earn a living. She worked at first as a church secretary at Abyssinian Baptist Church in Harlem, the parish at which the Reverend ADAM CLAYTON POWELL, Sr. was minister. This position led to a long-standing professional relationship with the minister's son, Adam Clayton Powell Jr., a CIVIL RIGHTS activist and Harlem's first African American congressional representative. After a short period in New York, Little-Collins moved to Boston to work at a grocery that her mother was running at the time. She was a hard worker, and she soon began sending money to the relatives remaining in Georgia so that they could also come north. Her father was very proud of her for bringing many family members from Georgia to Boston. Collins's devotion to her family extended beyond bringing them out of southern poverty: she was known to SUPPORT others in achieving their educational or career goals as well. Malcolm later wrote, "[I]f Ella had ever thought that she could help any member of the Little family put up any kind of professional shingle—as a teacher, a foot-doctor, anything ... you would have had to tie her down to keep her from taking in washing."

In 1933 Little-Collins married Dr. Thomas Lloyd Oxley, a Jamaican-born follower of MARCUS GARVEY. (Garvey urged black Americans to return to their African roots; many members of the Little family were proponents of his philosophy.) Oxley and Little-Collins divorced in 1934. By early 1939, when Little-Collins visited her father's family in Michigan and met Malcolm for the first time, she had been married to her second husband, Frank Johnson, for nearly four years. During this visit, the seeds were planted that led to Malcolm's living with her in Roxbury, Massachusetts, later that summer. Malcolm described his first meeting with his half sister, which occurred when he was a young adolescent and she was 26: "[S]he was the first really proud black woman I had ever seen in my life. She was plainly proud of her very dark skin. This was unheard of among Negroes.... I had never been so impressed with anybody."

Little-Collins' second husband was in the military when Malcolm arrived in the summer of 1939, after he had finished seventh grade. In his autobiography, Malcolm described Little-Collins as a community leader in Roxbury, an enclave of blacks outside of Boston, which was to Boston as Harlem was to New York. Little-Collins's standing and the Boston atmosphere impressed the young man, and after he returned home, during the next school year, when he became disenchanted with his opportunities in Michigan, he wrote to Little-Collins that he wanted to live with her permanently in Boston. Little-Collins arranged to transfer official custody of Malcolm to Massachusetts, and he moved there upon finishing eighth grade.

Little-Collins had separated from Frank shortly before Malcolm came to live in Roxbury in 1940. They divorced in June 1942. Malcolm later wrote, "[A]ny average man would find it almost impossible to live for very long with a woman whose every instinct was to RUN everything and everybody she had anything to do with—including me."

Little-Collins did not approve of the lifestyle that Malcolm began to lead in Roxbury and



later continued in Harlem. She was very strict, locking him out of the house if he failed to return home in time, forcing him to spend the night with other relatives who lived downstairs in the same house. She had married Kenneth Collins in June 1942. They had a child, Rodnell, in 1945. Even though Little-Collins had a family of her own, and Malcolm was in and out of trouble, she never really abandoned him. From time to time, when Malcolm returned to her household, she welcomed him with open arms.

After Malcolm was convicted of burglary and firearms charges and sent to prison in 1946, Little-Collins sent him money. In 1948, through her efforts, Malcolm was transferred from Concord Prison to the Norfolk, Massachusetts, Prison Colony, an experimental rehabilitative institution patterned after a college campus. This transfer proved to be monumental for Malcolm. The Norfolk Colony had an outstanding library, whose books Malcolm read prodigiously, and inmates were allowed to participate in cultural events such as debates, group discussions, and educational lectures. Malcolm read about history and RELIGION, increased his vocabulary, and developed his debating skills, all of which later served him as a leader in the NATION OF ISLAM.

Little-Collins continued to have contact with Malcolm after his release from prison, as his stature as a black leader increased. She also continued working within the black community. By 1957 her third MARRIAGE had ended; by Malcolm's description, Little-Collins was "more driving and dynamic" than the sum of her three husbands. Because of her half brother's influence, Little-Collins joined the Nation of Islam, becoming a member of Boston's Mosque Eleven. However, she was thrown out, according to Malcolm, because of her tendency to take charge of any situation. She was taken back, but later left on her own, breaking with Elijah Muhammad's Black Muslims in 1959.

During this time, Little-Collins also started the Sarah A. Little School of Preparatory Arts, in Boston, where children were taught Arabic, as well as Swahili, French, and Spanish. Little-Collins herself hired the teachers, who donated their time; although she did not speak any language but English, she echoed her half brother's belief in the importance of being able to communicate with others in their native tongues. The school's curriculum also included arts and etiquette instruction. It was in existence from 1958 to 1968.

Malcolm continued to rely on Little-Collins for her support of both himself and his ministry. After he was silenced as a spokesman for the Nation of Islam, he decided that he wanted to make a pilgrimage to Mecca, but he did not have enough of his own money to pay for the trip. He flew to Boston to ask Little-Collins for help. In his autobiography, he described their meeting as follows: "I was turning again to my sister Ella. Though at times I'd made Ella angry at me ... Ella had never once really wavered from my corner." When Malcolm announced that he wanted to make the pilgrimage, Little-Collins said only, "How much do you need?" Through the income from her REAL ESTATE holdings, Little-Collins had been saving for her own trip to Mecca, but insisted that Malcolm take the money because it was more important that he go. Malcolm later credited the trip, taken in April and May 1964, with broadening his horizons and changing his entire outlook on the U.S. blacks' struggle for civil rights.

After Malcolm was assassinated in February 1965, Little-Collins accompanied his widow to the medical examiner's office in New York to identify the body. Little-Collins later returned to Boston, where she announced at a press conference that she would choose the leaders of the Organization of Afro-American Unity (OAAU), the group Malcolm had set up after his break with Elijah Muhammad, to succeed Malcolm. Little-Collins herself served as interim president and president of the OAAU for a time as well as supporting the group financially. For ten years the OAAU sponsored workshops during the week of May 19, the anniversary of Malcolm's birth. Little-Collins, Adam Clayton Powell Jr., and the OAAU were instrumental in setting up what is said to be the nation's first degree-granting college black studies department, at the City College of New York, in 1969. However, perhaps owing to her domineering personality and the rift between her and Shabazz, the group's influence diminished after Malcolm's death.

Little-Collins continued supporting black causes by donating her time and money. She brought young people into her home, raised them, passed along the teachings of Malcolm, and sent several on pilgrimages to Mecca. She characterized herself as a human-rights activist rather than a civil-rights activist, because she felt that universal HUMAN RIGHTS were of primary

importance. Little-Collins eventually moved to a Boston-area nursing home, where she died August 3, 1996 at the age of 84. She left one son, Rodnell Collins, who is the OAAU's current president.

CROSS REFERENCE

Civil Rights Movement.

v LITTLETON, SIR THOMAS

Sir THOMAS LITTLETON was an English judge and writer who is known for his TREATISE on land law, entitled *On Tenures* (1481). Littleton's work served as an inspiration and model for later English jurists, including SIR EDWARD COKE.

Littleton was born in 1422 in Frankley Manor House, Worcestershire. He became a counsel at law in 1445 and served as a recorder of Coventry in 1450. In 1455 he became a judge of assize on the Northern Circuit, and he was appointed a justice of COMMON PLEAS in 1466. In 1475 King Edward IV made him a knight of the Bath. He died in 1481 and was buried in Worcestershire Cathedral.

Littleton's *On Tenures* is regarded as a model of legal scholarship, a clear and concise classification of English land law. Its significance rests in Littleton's attempt to impose a rational and orderly arrangement on legal rights in land. At the time the work was written, English land law had become extremely complicated.

The treatise consists of three books. The first deals with various estates in land, the second with the incidents of tenure (the holding of lands in SUBORDINATION to some superior), and the third with co-ownership and other specialized doctrines relating to property. Unlike previous authors, Littleton did not rely on ROMAN LAW but dealt exclusively with English land law.

Littleton followed a consistent method of analysis. He first defined a particular class of rights and then analyzed the many variations and implications of that class. Having identified certain key principles underlying a particular area of land law, Littleton then demonstrated how novel problems might be solved by reference to them. Modern commentators have lauded Littleton for the scientific organization of his material.

On Tenures was the first major legal treatise written in French instead of Latin and the first work on English law to be printed in London. For more than three centuries, it formed the standard introduction to students of English real PROPERTY LAW. Coke, who considered it a model of clear and lucid exposition of English law, made it the subject of his First Institute, *Coke upon Littleton* (1628). It stands as an early classic of English law.

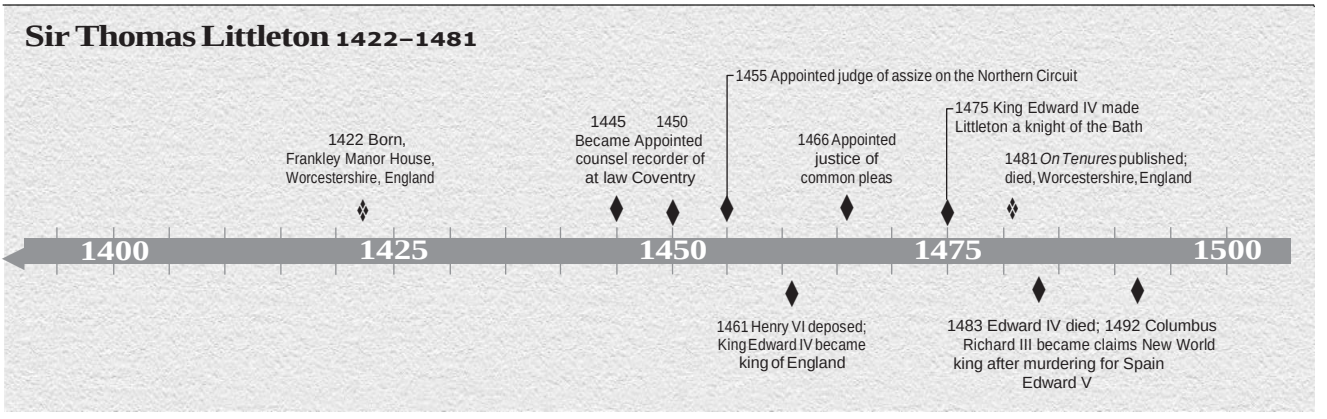
LITTORAL RIGHTS

Rights relating to the ownership of property that abuts an ocean, sea, or lake.

Littoral proprietors are occupants of land that borders the above-named bodies of water, WHEREAS *riparian proprietors* are those who occupy land bordering streams or rivers. Littoral rights are generally concerned with the use and enjoyment of the shore.

CROSS REFERENCE

Riparian Rights.



Viola Liuzzo.
AP IMAGES

LITVINOV ASSIGNMENT OF 1933

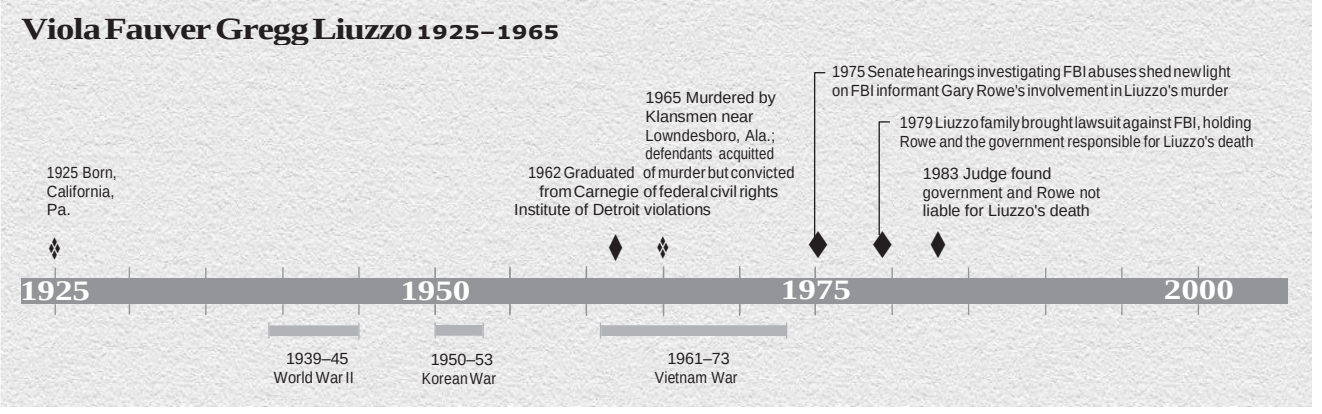
An executive agreement made by President Franklin Delano Roosevelt as part of the arrangements by which the United States recognized the Soviet Union.

The Litvinov Assignment purported to transfer to the United States certain American assets located in Russia that had been previously nationalized by the Soviet Union. Accordingly, the United States went to court to establish its title to the assets. In the famous case of *United States v. Pink*, 315 U.S. 203, 62 S. Ct. 552, 86 L. Ed. 796 (1942), the Supreme Court upheld this title on the basis of the executive agreement. The Court saw the agreement as an integral part of the new recognition policy of the government and as a proper method of mitigating losses resulting from the nationalization of U.S. owned property in the Soviet Union. The Court held that the powers of theexecutive branch in the conduct of foreign policy were not herein restricted by the need for Senate consent.

v LIUZZO, VIOLA FAUVER GREGG

CIVIL RIGHTS activist and martyr Viola Fauver Gregg Liuzzo was murdered after the 1965 voting rights march from Selma, Alabama, to Montgomery, Alabama. A 39-year-old wife, mother, and student, Liuzzo had spontaneously driven from her home in Detroit to help with the historic march. While transporting other participants back to Selma afterward, she was killed by members of the KU KLUX KLAN (KKK). The tragedy both shocked and inspired U.S. citizens. President LYNDON B. JOHNSON decried her slaying on national television, and her death gave impetus for passing the landmark VOTING RIGHTS ACT OF 1965 (42 U.S.C.A. § 1973 et seq.). Two Alabama juries failed to convict her assassins, who were ultimately found guilty of CONSPIRACY. Nearly two decades later, her family brought an unsuccessful $2 million lawsuit against the FEDERAL BUREAU OF INVESTIGATION (FBI), following congressional revelations that the bureau may have known about but done nothing to stop Klan plans to kill the marchers. Liuzzo's memory is honored by memorials in Alabama and commemorations in Detroit.

Liuzzo was born in the coal-mining town of California, Pennsylvania, on April 11, 1925. She dropped out of school in the tenth grade and worked as a waitress. In 1950 she married Anthony James Liuzzo, a business agent of the



International Brotherhood of Teamsters, with whom she had three children.

Liuzzo returned to school, and in 1962 she graduated with top honors from the Carnegie Institute of Detroit. She found employment as a medical laboratory assistant. Though a high school dropout, she loved reading, and introduced her children to the works of the philosopher HENRY DAVID THOREAU. She explained to them his theory of CIVIL DISOBEDIENCE, a concept that would find widespread support during the CIVIL RIGHTS MOVEMENT.

Despite her lack of formal education, Liuzzo won acceptance to Wayne State University. By 1965, she was studying Shakespeare and philosophy. Like other students across the United States, she became increasingly concerned about violence against civil rights workers. The civil rights movement was at a crossroads: It had achieved important gains against desegregation, but now it faced resistance and violence as it sought to win voting rights for African Americans living in the South.

In early March 1965 a pivotal event in civil rights history pushed the movement forward and changed Liuzzo's life. The MURDER of Jimmie Lee Jackson at the hands of Alabama troopers had motivated civil rights leaders to stage a protest march from Selma, Alabama, to the capitol in Montgomery, fifty miles away. The march would be led by MARTIN LUTHER KING, JR., president of the SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE (SCLC); Ralph J. Bunche, an African American Nobel laureate and diplomat to the UNITED NATIONS; and other dignitaries. Once at the capitol, they planned to confront Governor GEORGE WALLACE, an unbending foe of integration. But, as in previous civil rights protests, Wallace's state troopers struck first. On March 7, hundreds of African Americans set out from Selma, only to be stopped minutes later by club-wielding police officers and troopers. As law enforcement officers beat men, women, and children, millions of horrified U.S. citizens watched on television. Liuzzo and her family were among the viewers.

Within days, protests erupted nationwide. In Washington, D.C., some 600 people picketed outside the White House. In Detroit, Liuzzo joined 250 students in a march on local FBI offices. Wherever protests occurred, people demanded federal protection for civil rights workers and the passage of new voting rights legislation. King announced a new march from Selma to Montgomery. Before it could begin on March 9, federal judge FRANK M. JOHNSON, fearing new violence, postponed it. Two days later, another civil rights worker—the Reverend James J. Reeb, a Unitarian minister from Boston—died at the hands of violent whites in Selma.

On March 15, President Lyndon B. Johnson appeared on television to address both houses of Congress. He called for passage of the voting rights bill and also gave his full support to the marchers in Selma. That night, Liuzzo attended a meeting at which several Wayne State students said they would join the march. She too decided to go. She packed a few clothes in a shopping bag, and by the next afternoon was driving south.

Liuzzo was one of thousands arriving at the church that served as the launching point for the march, Brown Chapel. Appointed to the reception desk to help with last-minute chores, she greeted new arrivals. As was her way, she wanted to do more, and soon she had volunteered the use of her car for transporting others.

IT'S EVERYBODY'S FIGHT. THERE ARE TOO MANY PEOPLE WHO JUST STAND AROUND TALKING.
—VIOLA LIUZZO

On March 21, the journey to Montgomery began as marchers passed a vast contingent of federal security. Governor Wallace had ruled out protecting the marchers as being too expensive, but President Johnson had made available military police, FBI agents, U.S. marshals, and nineteen hundred members of the Alabama NATIONAL GUARD who were placed under federal control. There was to be no repeat of the violence committed two weeks earlier by Alabama troopers.

The five-day march ended in a gathering of 25,000 thousand people at the capitol in Montgomery, where King once again preached his doctrine of nonviolence. Yet he warned of further struggles ahead.

Now that the march was over, Liuzzo prepared to make good on her promise of driving people back to Selma. Staff members of the SCLC advised her that further help was unnecessary, given the buses already waiting. Liuzzo nevertheless drove three women and a man to their destination and by nightfall, was returning to Selma again, this time with 19-year-old Leroy Moton, an African American barber and civil rights worker. In the swamplands of Lowndes County, a car chased them down and its occupants shot and killed Liuzzo.

Moton, covered with Liuzzo's blood, feigned death and then ran three miles before finding safety with other civil rights workers.

It took the FBI eight hours to arrest three suspects, all Klan members. Gary Thomas Rowe, Jr., a 34-year-old Klan member who had been passing information to the FBI for five years, was riding with three others in the car from which the fatal shots were fired. Immediately, the state of Alabama indicted the other three men on first-degree murder charges. Rowe was given immunity and put in PROTECTIVE CUSTODY in return for testifying against Eugene Thomas, age 43; William Orville Eaton, age 41 and Collie Leroy Wilkins, Jr., age 21. According to Rowe's subsequent testimony, the men had received instructions from Klan leaders to punish one of the marchers.

A trial on state charges in May 1965 ended in a MISTRIAL. However, a subsequent federal trial, based on a conspiracy to violate Luizzo's civil rights, brought guilty verdicts. Each of the defendants was sentenced to ten years. A subsequent APPEAL failed.

In 1979 the Liuzzo family filed a $2 million lawsuit against the FBI. The suit accused the bureau of NEGLIGENCE in its hiring, training, and supervision of Rowe. The informant, it alleged, was a loose gun who had actively participated in the murder. U.S. district judge Charles Joiner heard the trial without a jury and on May 30, 1983, found that Rowe did not shoot Liuzzo. He further ruled that the government was not responsible for her death.

In 1982 the Detroit City Council honored Liuzzo for her contributions to the struggle for civil and HUMAN RIGHTS. In June 1982 a mayoral PROCLAMATION made June 1–8 VIOLA LIUZZO Commemoration Week. Other memorials followed. In 1985 nearly 100 marchers led by the Reverend Joseph Lowery, president of the SCLC, retraced the historic Selma-to-Montgomery march and laid a wreath at the site where she was murdered. There along U.S. Route 80, beside a swampy stretch, stands a simple stone marker, dedicated in 1991 by women members of the SCLC. It reads, "In Memory of Our Sister Viola Liuzzo Who Gave Her Life in the Struggle for the Right to Vote."

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LIVERY OF SEISIN

A ceremony performed in medieval England that effected the transfer of land from one party to another.

Livery of seisin was the dominant method of transferring land in England until 1536, and it continued to be legal until 1925. The term *livery of seisin* means simply "transfer of possession": *livery* means "delivery" and is from the Old French *livrer,* and *seisin* means "possession" and is from the Old French *saisir* or *seisir.* The concept behind livery of seisin, therefore, was the symbolic transfer of the possession of land. The entire ceremony of transfer was called FEOFFMENT with livery of seisin, with *feoffment* meaning "a gift," specifically a gift of a FREEHOLD interest in a parcel of land. The transferor was the feoffor, the transferee was the feoffee, and the land interest was the fief.

In the Middle Ages, a livery of seisin was essential to convey land from one party to another; without it no real right to land could be transferred. When performing the ceremony, the feoffor, the feoffee, and their witnesses generally stood on the land itself, though it was permissible to stand within view of the land if the feoffee made an actual entry to the land while the feoffor was still alive. During the ceremony the feoffor spoke appropriate words declaring the gift, and then handed the feoffee an object representing that gift, such as dirt, turf, or a twig, or even a ring, a cross, or a knife. If a house was being transferred, the ring of the door might be exchanged.

In addition to delivering possession of the land, the feoffor needed to vacate the land. The feoffor's tenants and others living on the land were expelled, along with their possessions. In some cases, the feoffor performed a ceremony or gesture showing abandonment of the land, such as by making a sign with the hands, jumping over a hedge, or throwing a rod to the feoffee.

A livery of seisin was sometimes accompanied by a deed, or charter of feoffment, written in Latin, which was used to call attention to the conveyance of land. This was often the case

when the transfer in question had special political significance or when it involved complex boundaries. If a charter of feoffment existed, it was read during the livery of seisin. However, such a charter did not in itself serve as a means of transferring land; rather, it was used simply as evidence that a transfer had taken place. Its language was not "I hereby give" but "Know ye that I have given." A charter of feoffment by itself was not considered an agreement to transfer land, but had to be accompanied by a livery of seisin.

During the Anglo-Saxon period in England, before the Norman Conquest of 1066, the use of writing was rare, so few charters existed. After the Norman invasion, writing was used more often, but charters were still generally short and crude. Eventually, over a period of hundreds of years, the delivery of a charter or deed came to replace the delivery of dirt, twigs, or knives that had been used to convey land in the livery-of-seisin ceremonies.

The Real Property Act of 1845 (8 & 9 Vict. ch. 106 [Eng.]) did not abolish livery of seisin, but it did allow deeds to be used freely as granting devices, which had the same effect. The Law of Property Act, passed in 1925 (15 & 16 Geo. 5, ch. 20 [Eng.]), finally abolished the livery-of-seisin ceremony.

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LIVERY STABLE KEEPERS

Individuals who, as a regular course of business, provide quarters for the boarding of horses and rent them for hire.

Livery stables are ordinarily subject to regulation. A municipal corporation acting subject to the authority delegated by the state legislature can prohibit the maintenance of such stables in particular areas of a town or city. Such regulation must be reasonable and uniform in its effect upon individual keepers as well as the general public at large. A state or a municipal corporation can require that a livery stable keeper obtain a license, or it can impose a tax upon their activities. Generally a livery stable keeper who hires out a horse makes an implied promise or warranty that it is fit for ordinary use. The livery stable keeper will be held liable in the event that the horse is vicious and, as a result, a person suffers injury as a result of the horse's behavior.

LIVING TRUST

A property right, held by one party for the benefit of another, that becomes effective during the lifetime of the creator and is, therefore, in existence upon his or her death.

A living trust, also known as an *inter vivos trust,* is different from a *testamentary trust,* which is created by will and does not take effect until the death of the settlor.

LIVING WILL

A written document that allows a patient to give explicit instructions about medical treatment to be administered when the patient is terminally ill or permanently unconscious; also called an advance directive.

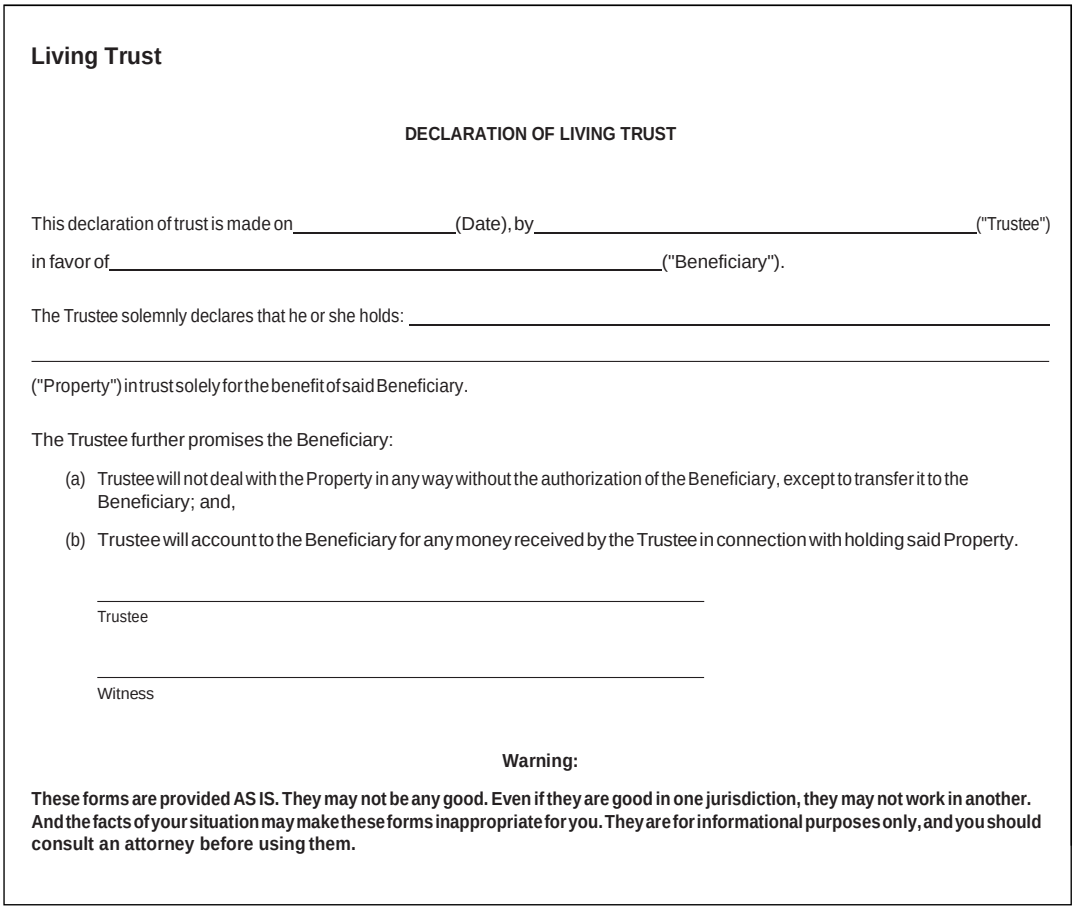
With improvements in modern medicine, the life of persons who are terminally ill or permanently unconscious can be prolonged. For increasing numbers of persons, the decision of whether to prolong life is being made in the form of a written document called a living will. The living will is one type of advance directive that may be used by a person before incapacitation to outline a full range of treatment preferences or, most often, to reject treatment.

A living will extends the principle of consent, WHEREBY patients must agree to any medical intervention before doctors can proceed. It allows the patient to guide health care for the future when she may be too ill to make decisions concerning care. It can be revoked by the patient at any time. For many the living will preserves personal control and eases the decision-making burden of a family.

Forty-two states and the DISTRICT OF COLUMBIA have living-will statutes that make a properly executed living will legally binding. In states that do not have a statute, living wills stand as a clear expression of the patient's wishes. Living-will statutes require that the person be legally competent to execute the will and that the will be witnessed by at least one disinterested person. Once a person who has a valid living will is terminally ill, the attending physician and a second physician must certify in writing that

A sample living trust.

ILLUSTRATION BY GGS CREATIVE RESOURCES. REPRODUCED BY PERMISSION OF GALE, A PART OF CENGAGE LEARNING.



Living Trust

DECLARATION OF LIVING TRUST

This declaration of trust is made on _____(Date), by _____("Trustee")

in favor of _____("Beneficiary").

The Trustee solemnly declares that he or she holds: _____

_____

("Property") in trust solely for the benefit of said Beneficiary.

The Trustee further promises the Beneficiary:

(a) Trustee will not deal with the Property in any way without the authorization of the Beneficiary, except to transfer it to the Beneficiary; and,

(b) Trustee will account to the Beneficiary for any money received by the Trustee in connection with holding said Property.

_____
Trustee

_____
Witness

Warning:

These forms are provided AS IS. They may not be any good. Even if they are good in one jurisdiction, they may not work in another. And the facts of your situation may make these forms inappropriate for you. They are for informational purposes only, and you should consult an attorney before using them.

there is no reasonable expectation for improvement in the patient's condition and that death will occur as a result of the incurable disease, illness, or injury.

Upon this certification the doctor is obligated to follow the instructions contained in the living will. This typically means the patient does not want any medical procedures that serve only to prolong but not prevent the dying process. Therefore, if the patient is unable to breathe, the doctor is not required to connect the patient to a respirator. A patient may state in a living will that he does not want a feeding tube if unable to swallow food. Another common directive is to forbid resuscitation if the patient's heart stops beating.

Living wills have been criticized because they are usually limited to the withholding or withdrawing of "life-sustaining" procedures from a patient with a "terminal condition" or "terminal illness," and thus do not accurately reflect the broad LEGAL RIGHT to refuse treatment. In addition, by their very nature, living wills reduce the patient's wishes to writing, and thus may be too rigid (or too vague) to adapt to changing interests or anticipate future circumstances.

To overcome these problems, many states have enacted statutes that permit a competent adult to designate a surrogate decision maker (also termed a health care PROXY or agent) to make health care decisions for her in the event of incapacitation. The proxy's authority is usually not limited to decisions about life-sustaining treatment. A proxy can supplement a living will.

All 50 states have durable-power-of-attorney statutes that permit an individual (the principal) to designate another person (the attorney in fact) to perform specific tasks during any period of incapacity. Though most of these statutes do not expressly refer to medical care decisions, no court has ruled that they preclude the delegation of medical decision-making authority to the attorney in fact.

CROSS REFERENCES

Death and Dying; Health Care Law; Organ Donation Law; Patients' Rights; Physicians and Surgeons; *Quinlan, In re.*

v LIVINGSTON, EDWARD

Edward Livingston was an important lawyer, politician, and diplomat who served under Presidents THOMAS JEFFERSON and ANDREW JACKSON. Apart from the many government offices he held, Livingston is remembered for proposing a comprehensive criminal code in which all offenses were clearly and simply defined.

Livingston was born on May 28, 1764, in Clermont, New York. His father, ROBERT R. LIVINGSTON, was a prominent New York political leader and judge in the years leading up to the American Revolution. His older brother, also named Robert R. Livingston, was a lawyer and a member of the CONTINENTAL CONGRESS committee that drafted the DECLARATION OF INDEPENDENCE. He was a close advisor to President Jefferson and negotiated the LOUISIANA PURCHASE from France. Edward Livingston followed in his brother's footsteps. After graduating from the College of New Jersey (now Princeton University) in 1781, he studied law in Albany, New York. He was admitted to the New York bar in 1785 and entered private law practice. In 1795 Livingston was elected to Congress. He served three terms and chaired the House Commerce Committee during his second term. Livingston earned Jefferson's loyalty when he opposed the ALIEN AND SEDITION ACTS and Jay's TREATY.

In 1801 Livingston left Congress to become U.S. attorney for New York City. That same year, he was elected Mayor of New York. What seemed a promising start to a successful political career came crashing down on Livingston in 1803. One of his aides either lost or took public funds, and Livingston was obligated to sell his property to pay off the debt. He severed ties with New York in 1804 and moved to Louisiana. He pursued his legal career, but the WAR OF 1812 brought him back into public life. He organized the New Orleans public defense committee and then served as General Andrew Jackson's top aide during the Battle of New Orleans. After the war, he returned to law practice, but by 1820 he was back in politics as part of the Louisiana state legislature.

In 1821 Livingston produced a criminal code that he urged Louisiana to adopt. He sought to bring order and clarity to CRIMINAL LAW and procedure, which was a mixture of statutes and many COMMON LAW decisions. It was his belief that people were entitled to know, rather than to guess, what actions constituted crimes. His code was not enacted by Louisiana but he tried again at the federal level when he entered the U.S. House of Representatives in 1823. In 1829 he was elected to the U.S. Senate as his model code, *A system of Penal Law for the United States of America,* drew favorable reviews in Europe. Although his code was never enacted, it remains an important document for the CODIFICATION movement that reached its zenith during the twentieth century.

Livingston resigned from the Senate in 1831 to serve as SECRETARY OF STATE for President Andrew Jackson. Two years later, he left that post to serve as U.S. minister to France. He returned to the United States in 1835 and died on May 23, 1836, in Barrytown, New York.

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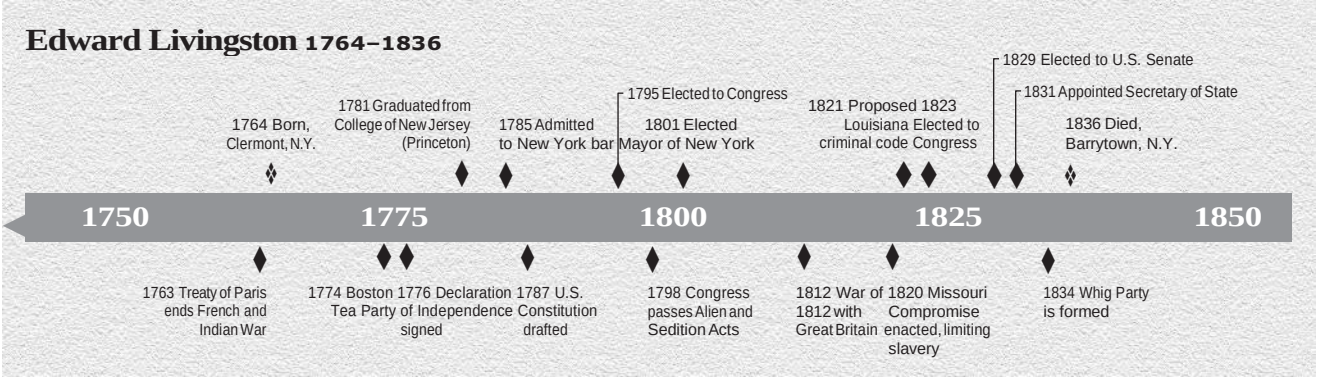
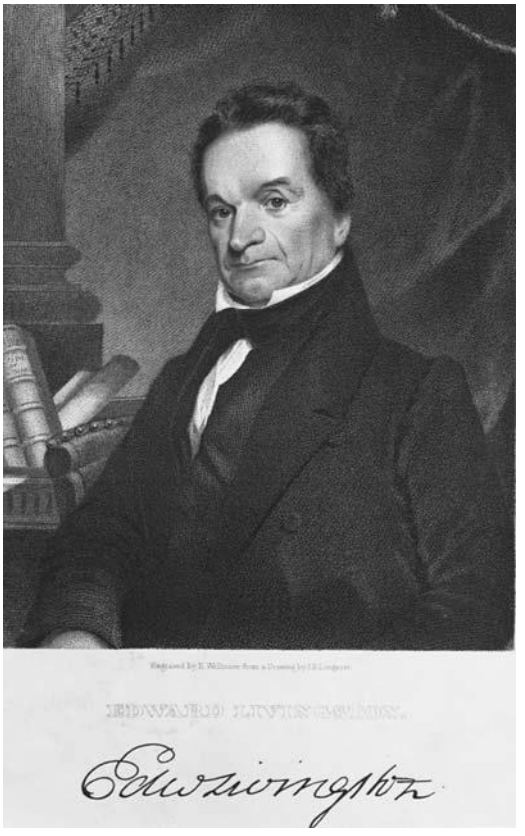




Henry B. Livingston.
LIBRARY OF CONGRESS/ CORBIS.

v LIVINGSTON, HENRY BROCKHOLST

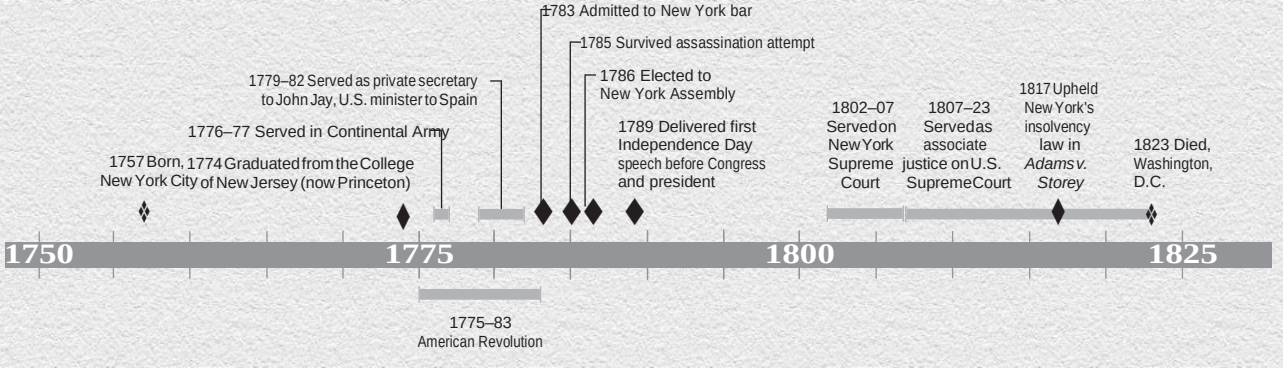
Henry Brockholst Livingston came from a powerful New York family. He was educated at Princeton alongside JAMES MADISON, had political ties to THOMAS JEFFERSON, and enjoyed rapid advancement through the military, private practice, and the bench. From 1802 to 1807, Livingston served on the New York Supreme Court. An outspoken anti-Federalist in his youth, Livingston grew more conservative in later life. He served as an ASSOCIATE JUSTICE on the U.S. Supreme Court from 1807 until his death in 1823.

Livingston was born November 25, 1757, in New York City. Established in New York in the late seventeenth century, his family also included other notable public figures: Philip Livingston (1716–78) signed the DECLARATION OF INDEPENDENCE, William Livingston (1723–90) was New Jersey's first governor, ROBERT R. LIVINGSTON (1746–1813) negotiated the LOUISIANA PURCHASE, and EDWARD LIVINGSTON (1764–1836) served in Congress and as SECRETARY OF STATE. At an early age, Livingston had several outstanding accomplishments in military service. He was commissioned a major at age 19. At 22 he was a secretary in Spain to his brother-in-law, U.S. minister JOHN JAY. At twenty-five he helped negotiate the end of the Revolutionary War.

Livingston's legal career advanced in similar fashion. After being admitted to the New York bar in 1783, he was soon in private practice working alongside ALEXANDER HAMILTON and AARON BURR. He entered politics in 1786 when he was elected to the New York Assembly. In 1789 he delivered the first Independence Day speech in Saint Paul's Church, before Congress, President GEORGE WASHINGTON, and other distinguished leaders. During this period he became a fierce anti-Federalist and sided with Jefferson.

Livingston's outspokenness in public and in print led to conflict. He survived an ASSASSINATION attempt in 1785, and in 1798, after being punched in the nose by an angry Federalist, he killed the man in a duel. But his politics also brought rewards. In return for helping Jefferson win the state of New York in the 1800

Henry Brockholst Livingston 1757–1823



presidential election, Livingston was appointed to the New York Supreme Court.

In four years on the New York bench, Livingston gained high distinction. He wrote 149 opinions—a prodigious number—many concerning his specialty, COMMERCIAL LAW. He tended to favor business interests at a time when capitalism was bustling. In civil liberties he took the traditional view that truth and GOOD FAITH were not defenses against a charge of SEDITIOUS LIBEL. He was also a practitioner of the art of judicial humor. His most-quoted opinion is his dissent in the so-called *Foxhunt* case, *Pierson v. Post*, 3 Cai. R. 175 (1805), which dealt with the question of who should be entitled to claim a fox—the hunter who has pursued it up to the end, or another hunter who snatches it at the last moment. "This is a knotty point," wrote Livingston, "and should have been submitted to the arbitration of sportsmen."

In 1807 President Jefferson made Livingston his second appointee to the U.S. Supreme Court. Under Chief Justice JOHN MARSHALL, Livingston's anti-Federalism was tempered, and he generally followed the chief justice's lead. Compared with the stream of opinions he issued in New York, his output of thirty-eight majority opinions, eight dissents, and six concurrences was minimal. He continued to write chiefly on commercial and maritime law; in the latter area, he was a specialist in PRIZE LAW, a now antiquated area of JURISPRUDENCE that dealt with the capture of goods at sea during wartime. Early Supreme Court justices, in addition to their duties on the Court, routinely travelled the circuit to which they were assigned and presided over its cases. Most scholars have found Livingston's circuit court decisions more notable than his opinions in Supreme Court cases, especially *Adams v. Storey*, 1 Fed. Cas. 141 (C.C.D.N.Y. 1817) (No. 66), in which he upheld New York's INSOLVENCY law against a challenge that it violated the Constitution's Contracts Clause and federal BANKRUPTCY JURISDICTION.

Livingston suffered two ethical lapses while on the Supreme Court. He told JOHN QUINCY ADAMS the Court's decision in FLETCHER V. PECK, 10 U.S. (6 Cranch) 87, 4 L. Ed. 629 (1810) before it was announced, when Adams was a counsel on the case. And while the Court was deciding Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518, 4 L. Ed. 629 (1819), he reportedly received EXTRAJUDICIAL information about the case from a former colleague.

Neither incident seems to have damaged his career. He continued to serve on the Court until his death on March 18, 1823, in Washington, D.C.

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v LIVINGSTON, ROBERT R.

Robert R. Livingston served the United States in many ways, from participating in the CONTINENTAL CONGRESS, to administering the oath of office to GEORGE WASHINGTON and negotiating the LOUISIANA PURCHASE.

Livingston was born November 27, 1746, in New York City. His great-grandfather came to America in the 1670s with little, but through hard work and a fortuitous MARRIAGE soon began building a vast empire. Livingston's father, Judge Robert R. Livingston, was called the richest landowner in New York, and REAL ESTATE holdings of the influential and politically active Livingston clan eventually totaled nearly 1 million acres.

After graduating from King's College (now Columbia University), Livingston studied law, and was admitted to the bar in 1770. He practiced law for a time with his college classmate and friend JOHN JAY. In 1773 he received a political appointment as recorder for New York City, wherein he presided over certain criminal trials. He held the position until 1775, when his Revolutionary sympathies made him unacceptable to the Crown.

Livingston was elected to the Continental Congress in 1775. He was soon appointed to the committee charged with drafting a DECLARATION OF INDEPENDENCE, with ROGER SHERMAN, BENJAMIN FRANKLIN, JOHN ADAMS, and THOMAS JEFFERSON. However, Livingston was apparently not involved in the actual drafting of the document; his appointment was seemingly a political maneuver designed to encourage the equivocating province of New York into a firm commitment to independence. Livingston himself was ambivalent. He believed that autonomy from

Robert R. Livingston.
LIBRARY OF CONGRESS

Britain was necessary and inevitable, but inexpedient at that time; in debate he advocated postponement of the issue. When the Continental Congress voted on the declaration on July 2, 1776, New York abstained, preventing a unanimous ballot. The New York delegation was forced to abstain because the New York convention had not authorized it to vote affirmatively. Within weeks a newly elected New York convention ratified the declaration, and the ratification was retroactively ruled unanimous. When the signing of the Declaration of Independence commenced in Philadelphia on August 2, Livingston was elsewhere organizing a committee to coordinate New York's defense and conferring with General Washington on military matters.

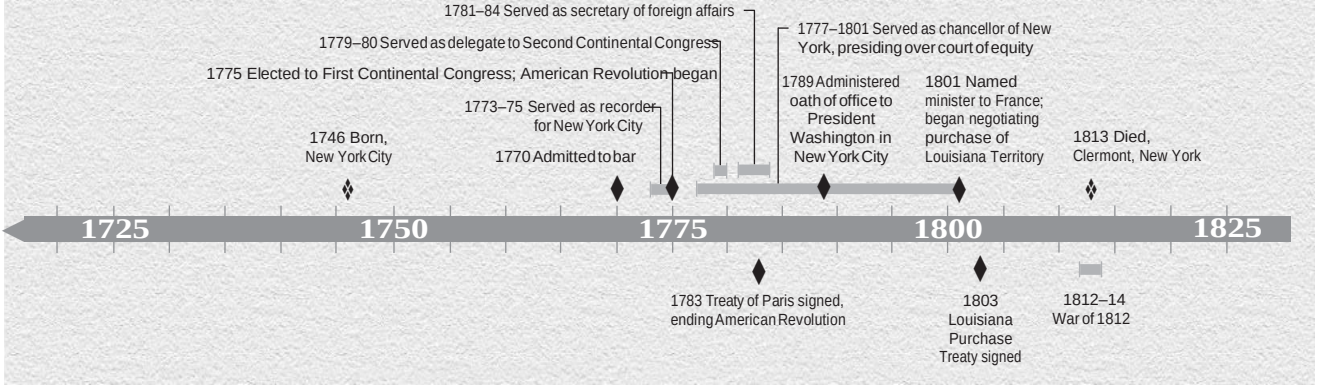
Livingston, Jay, and Gouverneur Morris were the principal writers of New York's constitution, which was submitted for approval in 1777. Livingston's main contribution to the document was a council of revision, which could veto legislation. The council of revision was composed of the governor, chancellor, and state supreme court justices.

In 1777 Livingston was appointed chancellor of New York, the state's highest legal officer, second in precedence only to the governor. In this position, which he held until 1801, he presided over the court of EQUITY. His legal abilities were highly regarded by his colleagues.

Livingston was again a delegate to the Continental Congress in 1779–80. A tireless worker, he was active on committees on financial affairs, military issues, legal organization, and foreign affairs, among others. He helped formulate a court of appeals. In 1780 he was nominated for an APPELLATE judgeship, but declined the position.

In 1781 Livingston was appointed secretary of foreign affairs, a position he held for three years. He organized the newly established department. His most important contribution during this period was his diplomatic correspondence regarding peace with Great Britain. The Revolutionary War was over, but negotiating the peace was a lengthy endeavor. Finally, on April 19, 1783, the TREATY OF PARIS made it official, and Livingston had the honor of conveying the news to General Washington.

Robert R. Livingston 1746–1813



Livingston served in the Continental Congress again in 1784–85. In 1788 he was a leader in Poughkeepsie, New York, at the convention to ratify the U.S. Constitution. A staunch Federalist, he was one of the most frequent pro-Constitution speakers at the ratifying convention. Livingston, along with ALEXANDER HAMILTON, played a major role in the success of FEDERALISM in New York at that time.

By virtue of his position as chancellor, Livingston administered the oath of office to President Washington in the national capital, then New York City, on April 30, 1789. His friend Jay was appointed chief justice of the U.S. Supreme Court, and Hamilton was named secretary of the treasury. Despite Livingston's activism the new government did not reward him with an office. Possibly for this reason, and because he disagreed with Hamilton's policy of federal assumption of state debts, Livingston turned anti-Federalist and entered into a political alliance with members of the Jeffersonian opposition—then called Republicans—in about 1791.

Jefferson offered Livingston the secretaryship of the Navy in 1800, but he declined. In 1801 Jefferson named him minister to France. Once in Paris Livingston set about investigating rumors that Spain was about to CEDE its province Louisiana back to France, which had owned it until 1762. Livingston was charged with preventing this. If unable to do so, he was to procure parts of the province, including West Florida and New Orleans, for the United States.

Livingston soon discovered that the retrocession had already occurred. However, because of impending war with Great Britain, a French failure in Santo Domingo, and financial concerns, Napoléon suddenly offered to sell the entire Louisiana Territory to the United States. No one really knew how vast the region was, but it was generally agreed that the Mississippi River formed the eastern boundary and the Rocky Mountains the western edge. Livingston and JAMES MONROE, who had recently joined him in Paris, negotiated the final deal for $15 million—purchasing approximately 828,000 square miles for only pennies an acre. Overnight, the size of the United States doubled. The Louisiana Purchase TREATY, closing the purchase from France, signed May 2, 1803, but antedated April 30, 1803, was the triumph of Livingston's career.

Livingston resigned his diplomatic post in 1804. After touring Europe he returned to his home in Clermont, New York, and retired from politics.

Livingston had long been interested in steam navigation. While in Paris he had met Robert Fulton, and the two men had entered into a partnership to develop a commercially successful steamboat. An early venture sank on the Seine, but in 1807 a new boat sailed on the Hudson River from New York City to Albany. The running speed of the *Clermont* approached five miles an hour, and cut sailing time to a small fraction of that required by the tall-masted Hudson River sloops then in use. Livingston had used his political clout to obtain a steam navigation MONOPOLY in New York in 1798, and he and Fulton set about attempting to exploit and extend the monopoly. Protracted LITIGATION concerning the monopoly kept Livingston occupied in his final years.

Livingston was very active in his home state as well as nationally. In addition to working on New York's constitution, he was a leader in Revolutionary organizations replacing the Crown government, and was a member of the commission that governed the state after the Revolutionary War. In 1811 he was on the first canal commission, which eventually resulted in the Erie Canal.

Livingston also had a keen interest in farming, and maintained an active correspondence with Jefferson, Washington, and others regarding the latest scientific agricultural methods. He was a leader in importing merino sheep from Spain and using gypsum as fertilizer.

Livingston died February 26, 1813, in Clermont.

ON THE WHOLE I THINK IT WOULD BE MORE DIGNIFIED AND MORE SAFE TO ACT UPON OUR GROUND AND IF WE MUST ENTER INTO THE WAR [AGAINST NAPOLEON], SECURE TO OURSELVES ALL THE ADVANTAGES THAT MAY RESULT FROM [DOING SO]. —ROBERT LIVINGSTON

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CROSS REFERENCE

New York Constitution of 1777.

LL.B.

An abbreviation denoting the degree of bachelor of laws, which was the basic degree awarded to an individual upon completion of law school until the late 1960s.

The degree has been largely replaced by the J.D., JURIS DOCTOR (or doctor of JURISPRUDENCE) degree.

v LLEWELLYN, KARL NICKERSON

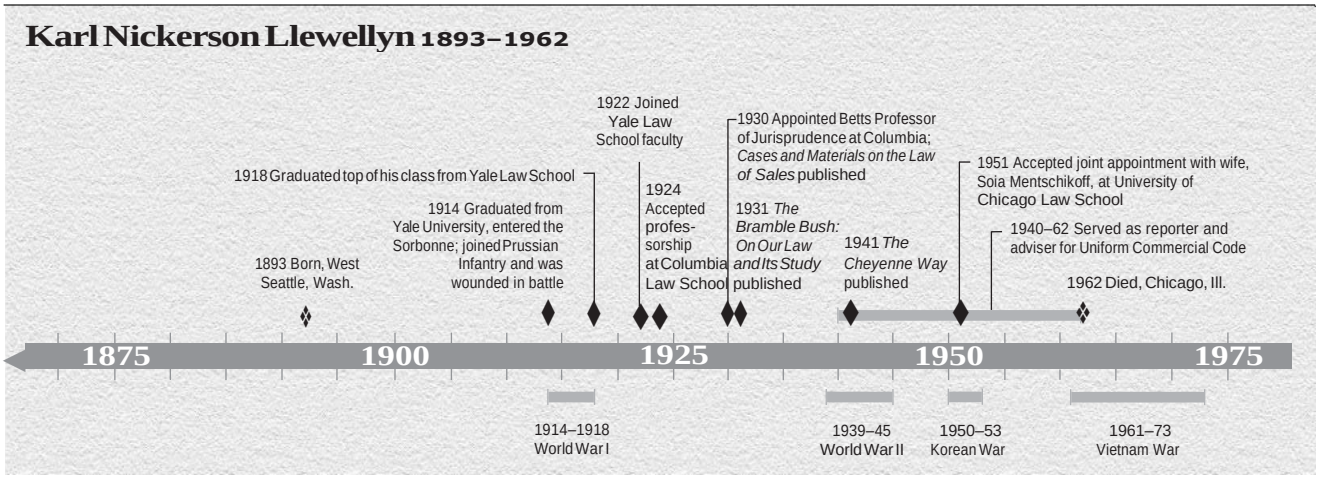
Karl N. Llewellyn was a distinguished legal scholar and professor, and a leading PROPONENT of LEGAL REALISM, a philosophy that is critical of the theory that the law operates only as a system of objective rules.

Llewellyn was born May 22, 1893, in West Seattle, Washington. His father was of Welsh ancestry and his mother's ancestors had come to the New World on the *Mayflower.* Llewellyn spent much of his youth in Brooklyn, where his family had moved during the first year of his life. Unhappy and unchallenged academically by high school in the United States, he entered the *Realgymnasium* in Mecklenburg, Germany, where he boarded with relatives of a family friend. During his three years in Germany, Llewellyn became fluent in German and demonstrated talent in mathematics and science. He left Mecklenburg in the spring of 1911, and briefly attended the University of Lausanne, in Switzerland, before returning to the United States.

In September 1911 Llewellyn entered Yale, where he compiled an outstanding academic record and excelled at athletics, especially boxing. In the spring of 1914 he entered the Sorbonne, in Paris, to study Latin, law, and French. He was still a student there when WORLD WAR I broke out. Although he never officially enlisted, he fought with the Seventy-eighth Prussian Infantry on the western front, earning the Iron Cross for his service. He was wounded in battle in November 1914 and spent nearly three months in a military hospital.

Llewellyn returned to the United States and to school in 1915. During his second stint at Yale, he took his coursework even more seriously and began considering a career in teaching. He studied under William Graham Sumner, the author of *Folkways* (1906), an acclaimed work concerning social practices and beliefs and the influence of both on society and individual behavior. The ideas and theories found in Sumner's work would significantly affect the development of Llewellyn's view of the law as a social institution that is greatly influenced by the surrounding culture.

Later in 1915 Llewellyn entered Yale Law School. He served as editor in chief of the *Yale Law Journal* for three years and wrote many of its articles himself. In 1918 he graduated at the top of his class. He remained for two years as a part-time instructor in the law school, filling in for an ailing professor. Llewellyn mostly taught courses in COMMERCIAL LAW, which later would become his specialty. In September 1920, thinking that practical experience was important before settling into an academic career, he took a position in the legal department of the National City Bank in New York City. Soon after he was hired, the bank dissolved its legal department and transferred its legal business



to the Wall Street law firm of Shearman and Sterling. Llewellyn was also transferred, and subsequently worked almost exclusively on the bank's legal affairs. Although he enjoyed the work and gained valuable experience in legal drafting and international banking matters, two years later he decided to return to teaching, accepting a full-time position at Yale as an assistant professor.

In 1923 Llewellyn was promoted to associate professor. He stayed at Yale for only a year, before accepting a post at Columbia Law School so that his first wife could continue with her graduate studies at Columbia University. He remained at Columbia until 1951. While there he authored a number of important books, including *The Bramble Bush: On Our Law and Its Study* (1931), adapted from a series of introductory lectures he had given to first-year law students during the 1929–30 ACADEMIC YEAR, when he was appointed the first Betts Professor of JURISPRUDENCE at Columbia. He also wrote what eventually would become a leading casebook on commercial law, *Cases and Materials on the Law of Sales*, published the same year.

Llewellyn's developing theories on legal realism, introduced in *The Bramble Bush*, brought him much attention. Llewellyn declared that legal opinions must be examined to see how judges are influenced by factors that might have nothing to do with the law. He wrote that "[f]or the long haul, for the large-scale reshaping and growth of doctrine and our legal institutions, ... the almost unnoticed changes ... [are] more significant than the historic key cases." Thus, he believed, lawyers should be trained to make persuasive arguments that emphasize the particular facts of a case, as those facts sometimes have a more significant effect on the outcome than does the applicable law.

Although Llewellyn's views were considered important and innovative, they also drew criticism. Opponents of his theories argued that, for practical reasons, legal realism was difficult to apply. Under Llewellyn's system of jurisprudence, they argued, a lawyer would be required to go to potentially ridiculous lengths to argue a case adequately, in an effort to learn every possible factor that could affect its outcome. As a result, Llewellyn's legal-realist theories never replaced the prevailing (and well-settled) view of the law as a set of well-defined rules to be applied to each individual situation.

Although his theories did not have quite the effect he had hoped for, Llewellyn is still widely viewed as an important legal scholar and author. His writings extend to nonlegal areas, including a book on anthropology, *The Cheyenne Way* (1941), which was a study of dispute resolution among the Cheyenne Indians, which he coauthored with anthropologist E. Adamson Hoebel. Llewellyn was also active in the LEGAL AID Society, the AMERICAN CIVIL LIBERTIES UNION, and the National Association for the Advancement of Colored People (NAACP).

In 1951 Llewellyn left Columbia for the University of Chicago Law School, where he and his third wife, SOIA MENTSCHIKOFF, a commercial law scholar, accepted a joint appointment. Llewellyn taught there for nearly ten years and also served as chief reporter on the UNIFORM COMMERCIAL CODE, drafted during the early 1950s. He died in Chicago on February 13, 1962.

A COURT IS DOING ITS DUTY WHEN ... WITH CLEAR CONSCIOUSNESS THAT IT UNDERSTANDS WHAT IT IS DOING AND WHY, AND WITH CLEAR STATEMENT OF BOTH, IT GOES TO BAT ON THE WHOLE OF A BROAD SITUATION.
—KARL LLEWELLYN

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LL.M.

An abbreviation for Master of Laws, which is an advanced degree that is awarded to an individual who already holds a J.D. upon the successful completion of a prescribed course of graduate study in law.

A candidate for an LL.M. degree must complete the program set forth by the graduate admissions department in the particular law school he or she attends. The program ordinarily entails a minimum number of credit hours, including some credits in seminar courses and courses in which the student must take an examination for grading purposes. Candidates generally must also comply with such requirements as the maintenance of a minimum grade average as well as attendance requirements.

Students enrolled in LL.M. programs may either opt for a general degree or a degree in a specialized area of law. An LL.M. is generally available in such specialized areas as INTERNATIONAL LAW, labor relations, and TAXATION.

Load lines indicate the legal limit to which a ship may be loaded for specific ocean areas and seasons of the year. In the United States, the U.S. Coast Guard issues these regulations.

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LOAD LINES

A marking indicating the extent to which the weight of a load may safely submerge a ship; also called Plimsoll line.

The load line, or Plimsoll mark, is positioned amidships on both sides of a vessel. Its purpose is to indicate the legal limit to which a ship may be loaded for specific ocean areas and seasons of the year. The basic Load Line Certificate is issued after a complex calculation is made to determine exactly where the Plimsoll mark should be positioned. These certificates take several forms, such as international voyage, coastwise traffic, and Great Lakes operations.

By calculating the load line, the agency issuing a certificate has determined, among other aspects of seaworthiness, that a vessel has enough volume of ship (reserve buoyancy) above the waterline so that it will not be in danger of foundering or plunging when under way in heavy seas. In the United States the U.S. Coast Guard issues load line regulations; routine assignment of load lines is handled by the American Bureau of Shipping.

A series of multilateral treaties has been executed to impose on signatories the responsibility of seeing that ships flying under their flag have safe load lines designated and that they are observed. The principal TREATY is the International Convention on Load Lines 1966. The use of load lines on vessels sailing under the flag of the United States is mandated by federal law (46 U.S.C.A. 86 [1973]). The treaties typically do not apply to ships of war, small ships, pleasure boats, and FISHING VESSELS.

LOAN COMMITMENT

Commitment to a borrower by a lending institution that it will loan a specific amount at a certain rate on a particular piece of real estate. Such commitment is usually limited to a specified time period (e.g., four months), which is commonly based on the estimated time that it will take the borrower to construct or purchase the home contemplated by the loan.

LOAN SHARK

A person who lends money in exchange for its repayment at an interest rate that exceeds the percentage approved by law and who uses intimidating methods or threats of force in order to obtain repayment.

In most jurisdictions USURY laws regulate the charging of interest rates. Loan sharking violates these laws, and in many states it is punishable as a criminal offense. The usual penalty imposed is a fine, imprisonment or both.

LOBBYING

The process of influencing public and government policy at all levels: federal, state, and local.

Lobbying involves the advocacy of an interest that is affected, actually or potentially, by the decisions of government leaders. Individuals and interest groups alike can lobby governments, and governments can even lobby each other. The practice of lobbying is considered so essential to the proper functioning of the U.S. government that it is specifically protected by the FIRST AMENDMENT to the U.S. Constitution: "Congress shall make no law ... abridging ... the right of the people peaceably ... to petition the Government for a redress of grievances."

The practice of lobbying provides a forum for the resolution of conflicts among often diverse and competing points of view; provides information, analysis, and opinion to legislators and government leaders to allow for informed

and balanced decision making; and creates a system of checks and balances that allows for competition among interest groups, keeping any one group from attaining a permanent position of power. Lobbyists can help the legislative process work more effectively by providing lawmakers with reliable data and accurate assessments of a bill's effect.

The role lobbyists play in the legislative arena can be compared to that of lawyers in the judicial arena. Just as lawyers provide the trier of fact (judge or jury) with points of view on the LEGAL issues pertaining to a case, so do lobbyists provide local, state, and federal policymakers with points of view on PUBLIC POLICY issues.

Although lobbying as a whole serves as a checks-and-balances safeguard on the legislative process, individual lobbyists are not necessarily equal. Unlike voters, who each get one vote, lobbyists vary in their degree of influence. The level of influence a lobbyist has over the legislative process is often proportional to the resources—time and money—the lobbyist can spend to achieve its legislative goal. Some people think lobbyists in general have too much power. During his 1912 campaign for president, WOODROW WILSON remarked, "The government of the United States is a foster child of the special interests. It is not allowed to have a will of its own."

The term *lobbyist* has been traced to the mid-seventeenth century, when citizens would gather in a large lobby near the English House of Commons to express their views to members of Parliament. By the early nineteenth century, the term *lobby-agent* had come to the United States, where it was applied to citizens seeking legislative favors in the New York Capitol lobby, in Albany. By 1832 it had been shortened to *lobbyist* and was widely used at the U.S. Capitol.

In the early twenty-first century, lobbyists practice their trade not only in the halls of the U.S. Capitol and the corridors of state legislatures, but also on playgrounds, in boardrooms, in manufacturing plants, at cocktail parties, and in retirement homes. Contemporary lobbying methods include political action committees, high-tech communication techniques, and coalitions among groups and industries sharing the same political goals, and campaigns to mobilize constituents at the grassroots level. Lobbyists include schoolchildren who want to prevent their favorite neighborhood park from becoming a shopping mall, corporations who contribute to a particular legislator's campaign, lawyers who speak with legislators on behalf of their clients' business interests, cities who lobby the state legislature for changes in transportation laws, presidential aides who suggest new AMENDMENT language to congressional committee members, retired persons who want to save their government benefits, and many others. Each type of lobbyist attempts to win support for a particular point of view.

Samuel Ward, a well-respected lobbyist, was so successful at influencing legislators that, in the mid-1800s, Congress decided to investigate him. When questioned about the elegant dinners he orchestrated for politicians, the self-described King of the Lobby said, "At good dinners people do not talk shop, but they give people a right, perhaps, to ask a gentleman a civil question and get a civil answer."

Despite the noncorrupt success of lobbyists such as Ward, lobbyists during the mid-nineteenth century were often regarded as ethically questionable individuals. This reputation was enhanced whenever lobbyists abused their position with improper practices such as bribing members of Congress.

Although lobbying is specifically protected by the Constitution, numerous attempts have been made to regulate it—attempts that, not surprisingly, lobbyists have historically resisted. Congress began efforts to reform lobbying in 1907, when it banned campaign contributions from banks and corporations. In 1911 proposed restrictions on domestic lobbying were first considered, but these were not approved until 1946, when Congress passed the Federal Regulation of Lobbying Act (2 U.S.C.A. §§ 261, 261 note, 262–270 [1946]).

In 1954 lobbyists challenged the Regulation of Lobbying Act for being unconstitutionally vague and unclear. In *United States v. Harriss*, 347 U.S. 612, 74 S. Ct. 808, 98 L. Ed. 989, the Supreme Court responded by upholding the act's constitutionality but also by narrowing the scope and application of the act. The Court ruled that the act applies only to paid lobbyists who directly communicate with members of Congress on pending or proposed federal legislation. This means that lobbyists who visit with congressional staff members rather than members of Congress themselves are not considered lobbyists. In addition, the act covers only attempts to influence the passage or defeat of

Should Lobbyists Be Strictly Regulated?

Between the 1940s and the early 2000s, there was a continuing debate in the United States over the proper role of lobbyists in a democratic society. Lobbyists contend they offer a valuable service to legislators and government officials, providing information and raising questions about pending legislation or executive action. Critics argue that many lobbyists are nothing more than influence peddlers who seek political and legislative favors for their clients.

The perception that lobbyists and the interest groups they represent have corrupted the political process has led to state and federal legislation that regulates lobbyists. Nevertheless, a fundamental conflict remains over the extent to which government may regulate lobbyists and lobbying activities. Those opposed to restrictions on lobbying argue that the FIRST AMENDMENT guarantees the right of citizens to petition the government for redress of grievances. Placing restrictions on lobbyists impairs this right. On the other side, critics of lobbyists assert that regulations are needed to preserve the democratic process and to ensure the legitimacy of government. Many people have become cynical about politicians and government, perceiving that only lobbyists have access to the halls of power.

Lobbyists believe that their activities are protected by the First AMENDMENT. Though the U.S. Supreme Court has never stated that there is a constitutional right to petition the government, supporters of lobbying note that several state supreme courts have acknowledged a FUNDAMENTAL RIGHT to do so. Therefore, any regulations on lobbying must be the least restrictive means to further a compelling STATE INTEREST.

Lobbyists assert that regulations requiring them to name specific contacts made with legislative or congressional staff have a chilling effect and weaken relationships that have been built up over many years. Staff members are often under time pressure to find information on legislative issues and depend on lobbyists to help them meet these demands. Disclosure of contacts with lobbyists forces staff members to refrain from making legitimate requests, out of fear that disclosure will produce political embarrassment.

Lobbyists argue they have been given an unflattering and absurd stereotype as influence peddlers. With more than 14,000 lobbyists in Washington, D.C., representing a wide range of interest groups, including environmental and consumer organizations, it is clear that there is a demand for lobbying. The size and complexity of the federal government have, in large part, driven the need for lobbyists to help define positions on issues of PUBLIC POLICY. Moreover, on all issues of widespread concern, lobbyists are found on both sides, producing one more set of checks and balances that undercuts the simplistic picture of corruption and favoritism.

Lobbyists and their supporters maintain that intrusive regulations on lobbying can impair the democratic process. Laws that seek to identify contributors to lobbying groups may have a chilling effect on the exercise of citizens' rights. If made public, a contribution to an unpopular lobby can discourage similar contributions by others. Because many unpopular lobbies are small and poorly

legislation in Congress and excludes other congressional activities. Further, the act applies to and restricts only individuals who spend at least half of their time lobbying.

According to the 1946 act, lobbyists to whom the law applies are required to disclose their name and address; the names and addresses of clients for whom they work; how much they are paid and by whom; the names of all contributors to the lobbying effort and the amount of their contributions; accounts that tally all money received and expended, specifying to whom it was paid and for what purposes; the names of all publications in which the lobbyists have caused articles or editorials to be published; and the particular legislation they have been hired to support or oppose. In addition, the act requires lobbyists to file registration forms with the clerk of the House of Representatives and the secretary of the Senate prior to engaging in lobbying. These forms must be updated in the first ten days of each calendar quarter for as long as the lobbying activity continues. Violation of the act is a MISDEMEANOR punishable by a fine of up to $5,000 or a jail sentence of up to 12 months, and a three-year prohibition on lobbying.

Although a number of lobbying statutes have been enacted that regulate special situations—such as lobbying by the agents of foreign governments, employees of holding companies, and firms affected by various federal shipping

funded, discouraging even a few donors may significantly affect the support for a wide variety of viewpoints.

Supporters of strict regulation of lobbyists dispute these arguments. They contend that regulation is needed to prevent special interests from controlling the political process, to ensure ethical behavior on the part of lawmakers and government officials, and to enhance the public's confidence in the government. Numerous scandals have been linked to lobbying at the federal and state levels, providing ample justification for such regulation. Lobbyists have a place in the legislative process, concede many critics, but they must be prevented from using money and favors improperly to influence legislators and their staffs.

Critics of lobbying note that the courts have generally supported reasonable regulation of lobbying activity. This type of regulation does not prevent lobbyists from openly and appropriately communicating with government in regard to legislation. The regulation does restrict traditional practices such as giving legislators and staffs tickets to sporting events, paying for meals and entertainment, and underwriting golf and skiing junkets. These practices have contributed to the public perception that gifts and favors buy access to legislators and sometimes even votes.

Critics of lobbying also support regulation that forces the public disclosure of whom lobbyists represent. Registration of lobbyists is a minimally restrictive means of serving the public interest, yet it gives the public information on which interest groups are involved in pending legislative matters. Critics argue that lobbyists should not be permitted to work their influence in anonymity. The public has a right to know what interest groups have shaped legislation.

Despite the reforms legislated in the federal Lobbying Disclosure Act of 1995 (109 Stat. 691, 2 U.S.C.A. § 1601 et seq.), critics of lobbying argued that additional reform was needed. The act addressed disclosure, registration, and a ban on gifts and meals, but it left large loopholes, the largest being the ability of lobbyists to make large contributions to the campaign committees of members of Congress. The critics pointed out the irony of banning small gifts yet permitting senators and representatives to accept $5,000 donations for their campaign committees from political action committees controlled by lobbyists. Even more distressing, note critics, was the change this situation has produced in the dynamics between lobbyist and legislator: It is now the legislator who calls the lobbyist, asking for a political contribution.

Criticism of lobbyists intensified when, in 2001, the Bush administration and the Republican leadership in the House of Representatives gave unprecedented access to lobbyists. The most infamous lobbyist was Jack Abramoff, a member of the Bush transition team who wined and dined legislators and federal officials and whose illegal actions led to his conviction and imprisonment in 2006. Several Republican Congressmen were convicted of taking bribes from other lobbyists. In response, Congress enacted the Honest Leadership and Open Government Act (HLOGA), amending the 1995 act and placing tighter restrictions on lobbying contacts and activities. Nevertheless, the power of lobbyists has continued to grow. It was estimated that lobbyists for the healthcare industry were spending $1 million a day in 2009 to influence the course of HEALTH INSURANCE reform.

Critics charge that the unceasing quest for campaign cash has distorted the political system. The only way to prevent lobbyists and the special interests they represent from dominating the legislative process is to establish public financing of congressional campaigns. Once campaign contributions are no longer an issue, critics conclude, lobbyists will lose their last effective means of improperly influencing legislation.

laws—the Federal Regulation of Lobbying Act remains the only comprehensive law governing the practice of lobbying.

Critics of the 1946 act suggest that its effectiveness is limited, since it does not apply to a large part of the population that actually lobbies the government. In fact, in 1991 the GENERAL ACCOUNTING OFFICE (now the Government Accountability Office, or GAO) found that nearly 10,000 of the 13,500 individuals and organizations listed in a popular lobbyist directory were not registered under the 1946 act.

In 1995 Congress passed a law designed to close loopholes in the 1946 law by increasing lobbyists' accountability: the Lobbying Disclosure Act of 1995 (Pub. L. No. 104-65, 109 Stat. 691). Under the new law, individuals who receive at least $5,000 in a six-month period from a single client are required to register with the clerk of the House and the secretary of the Senate, listing the congressional chambers and federal agencies they contacted, the issues they lobbied for, and how much money was spent on the effort. The reporting requirements also apply to organizations whose own employees lobby on their behalf and spend at least $20,000 in a six-month period on that effort.

In September 2007 President GEORGE W. BUSH signed the Honest Leadership and Open Government Act (HLOGA) into law, amending the 1995 act and placing tighter restrictions on lobbying contacts and activities. The 2007 act

requires quarterly reporting of lobbying activity and expenses and mandates that individuals who spend 20 percent or more of their time on lobbying activities register as a lobbyist. It also modifies the existing federal gift allowances, making the gift giver, not just the recipient, subject to sanctions for violating the applicable rules. In addition, the 2007 act increases civil and criminal penalties for knowing violations of the rules.

In 2009, on his first day in office, President BARACK OBAMA continued the effort to place tighter restrictions on lobbyists. President Obama created new lobbying rules that placed restrictions on his staff's ability to lobby the White House after leaving employment and prevented aides from working on matters they had lobbied on prior to coming to the White House. The new rules also prevent aides from approaching agencies that were the target of their prior lobbying efforts, and prohibit lobbyists from giving gifts to any member of the Obama administration.

In addition to the federal regulations, states may separately enact their own regulations governing state lobbying. Most lobbying restrictions involve reporting and registration provisions similar to those in place at the federal level.

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CROSS REFERENCE

Election Campaign Financing.

LOCAL ACTION

A lawsuit concerning a transaction that could not occur except in some particular place. Any type of lawsuit that can be brought only in one place. A classic example is a situation where recovery of possession of a particular parcel of land is sought.

LOCHNER V. NEW YORK

In *Lochner v. New York,* 198 U.S. 45, 25 S. Ct. 539, 49 L. Ed. 937 (1905), the U.S. Supreme Court struck down a state law restricting the hours employees could work in the baking industry, as a violation of the freedom of contract guaranteed by the Due Process Clause of the FOURTEENTH AMENDMENT. This seemingly minor decision spawned a new era in constitutional interpretation.

CONSTITUTIONAL LAW is often divided into three eras, the center of which is *Lochner.* In the pre-*Lochner* era (1789–1870), courts interpreted the Due Process Clause of the FIFTH AMENDMENT to have primarily a procedural content that protected persons against arbitrary governmental deprivations of life, liberty, and property. This procedural right meant that individuals were entitled to sufficient notice and a FAIR HEARING before the government could take harmful action against them. Courts reviewed only the manner in which a particular law infringed on a substantive right, without evaluating the importance of the right or the severity of the INFRINGEMENT.

During the *Lochner* era (1870–1937), courts interpreted the Due Process Clauses of the Fifth and Fourteenth Amendments to have a substantive content that protected from governmental intrusion certain economic and property interests, such as the right of employers and employees to determine the terms and conditions of their employment relationship. (Though *Lochner* was decided in 1905, prior cases going

back to 1870 contributed to *Lochner* and are included in the *Lochner* era.)

The post-*Lochner* era (1937–present) is marked by decreased constitutional protection for economic and property rights and increased recognition of "fundamental" constitutional rights that protect minorities from discrimination, safeguard the interests of criminal defendants, and delineate a sphere of private conduct upon which the state may not encroach.

The *Lochner* era was an outgrowth of the U.S. industrial revolution. During the second half of the nineteenth century, the output of manufactured goods tripled, and the value of those goods soared from $3 billion to over $13 billion. The national labor force kept pace during this period, growing from 13 million to 19 million workers. Along with the growth of industry came a large disparity in the wealth and working conditions of U.S. citizens. Although some business proprietors were working fewer hours and making more money, many of their employees were working more hours in unhealthy conditions for scant wages. The bakers of New York were one group of such workers.

New York bakers at this time reportedly worked 12 hours per day, seven days per week, in a confined and uncomfortable environment. This lifestyle left little time for rest, causing some bakers to live in their kitchen and sleep at their workbench. A number of bakers died at an early age, and others contracted debilitating diseases. In 1895 the New York state legislature unanimously passed the Bakeshop Act, which attempted to address these problems by limiting the working hours of bakers to ten a day and 60 a week.

In 1902 Joseph Lochner, who owned a small bakery in Utica, was fined $50 for permitting an employee to work more than 60 hours in a week. During the trial Lochner offered no defense and was convicted. On APPEAL he challenged the constitutionality of the Bakeshop Act, claiming that it interfered with his right to pursue a lawful trade. The state defended the statute by arguing that it represented a legitimate exercise of its police powers, pursuant to which the legislature may enact laws to preserve and promote the health, safety, and morality of society.

Lochner's claim did not lack PRECEDENT. In 1897 the Supreme Court nullified a Louisiana statute that attempted to regulate contracts between state residents and out-of-state insurance companies (*Allgeyer v. Louisiana,* 165 U.S. 578, 17 S. Ct. 427, 41 L. Ed. 832 [1897]). Holding that that statute impaired the liberty of contract guaranteed by the Due Process Clause of the Fourteenth AMENDMENT, the Court said that the Louisiana resident had a right "to live and work where he will," "to earn a livelihood by any lawful calling," and to "enter into all contracts which may be proper, necessary, and essential to ... carrying out ... the purposes above mentioned."

In addition to this precedent, the general mood of the country also favored Lochner's claim. Despite the universal support for the Bakeshop Act in the New York Legislature, a large number of U.S. citizens were still committed to the idea that in a capitalistic market, a government that governs least governs best (an idea that reflects laissez-faire economics).

In a 5–4 decision, the Supreme Court upheld Lochner's due process claim, striking down the Bakeshop Act as an interference with the right of employers and employees "to make contracts regarding labor upon such terms as they may think best, or upon which they may agree." Writing for the majority, Justice RUFUS W. PECKHAM said that despite statistics indicating that the baking industry was not as healthy as some other trades, the common understanding of the Court suggested otherwise. "The trade of a baker," Peckham wrote, "is not ... unhealthy ... to such a degree which would authorize the legislature ... to cripple the ability of the laborer to support himself and his family."

The Court acknowledged that state governments possess police powers to protect the health and safety of their residents. However, the Court said, a statute must have a direct relation to a material danger that would compromise the public health or the health of employees before it may restrict the hours of labor in any trade or profession. In this case, the Court concluded, the connection between the Bakeshop Act and the health and WELFARE of New York bakers was too remote.

Two dissenting opinions were written in *Lochner,* one by Justice OLIVER WENDELL HOLMES JR., and the other by Justice JOHN M. HARLAN. Both dissents attacked the majority opinion as judicial activism and extolled the virtues of judicial self-restraint.

Harlan conceded that the Due Process Clause contains a substantive content that protects the liberty of contract. But this liberty, Harlan

emphasized, may be circumscribed by state regulations that are calculated to promote the GENERAL WELFARE. Such regulations, Harlan argued, must be sustained by state and federal courts unless they clearly exceed legislative power, bear no substantial relation to societal welfare, or invade rights secured by FUNDAMENTAL LAW. Harlan concluded that doubts as to the validity of a statute must be resolved in favor of upholding its validity. Applying this standard, Harlan found the Bakeshop Act valid.

Holmes's dissent is considered a classic exposition of judicial self-restraint. As part of the U.S. system of democracy, Holmes stated, a majority of adults residing in any state have the "right to embody their opinions in law," even if those opinions are tyrannical or injudicious. It is the judiciary's role in this system to interpret and apply the laws passed by the coordinate branches of government.

Notwithstanding the Court's decision in *Lochner*, state legislatures were apparently free to maintain a paternalistic role when enacting similar laws that applied only to women. Three years after *Lochner*, the Court upheld the constitutionality of an Oregon statute that restricted women from working more than ten hours per day in a mechanical establishment, factory, or laundry. *Muller v. Oregon*, 208 U.S. 412, 28 S. Ct. 324, 52 L. Ed. 551 (1908). Although the statute was very similar to the New York statute, except that it applied to women, the Court clearly based its decision upon its perception that women were inferior to men. According to the majority opinion written by Justice DAVID BREWER, "That woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence is obvious ... history discloses the fact that woman has always been dependent upon man." Because the Court found that the statute was designed for what it considered the necessary protection of women in the workplace, the Court upheld the statute as constitutional under the Fourteenth Amendment. In doing so, the Court specifically left the RULING in *Lochner* intact.

Lochner remained the controlling precedent for nearly 30 years; it was overruled finally in WEST COAST HOTEL CO. V. PARRISH, 300 U.S. 378, 57 S. Ct. 578, 81 L. Ed. 703 (1937). *Parrish* examined the validity of a Washington state statute that established a MINIMUM WAGE for women. A hotel owner challenged the constitutionality of the statute on the grounds that it violated his liberty of contract guaranteed by the Fourteenth Amendment.

The hotel owner relied on *Lochner* and a series of subsequent cases that nullified various state regulations as inconsistent with the substantive rights protected by the Due Process Clause. One of these cases, *Adkins v. Children's Hospital*, 261 U.S. 525, 43 S. Ct. 394, 67 L. Ed. 785 (1923), invalidated a similar minimum wage law in the DISTRICT OF COLUMBIA. But the Supreme Court was no longer persuaded by the rationale underlying *Lochner* and ruled that the Washington statute was a reasonable exercise of the state's police powers.

In the 32 years between *Lochner* and *Parrish*, the United States was confronted by a STOCK MARKET crash in 1929, which precipitated the Great Depression of the 1930s. President FRANKLIN D. ROOSEVELT attempted to combat some of the more serious problems of the depression by initiating a host of federal laws known collectively as the NEW DEAL. These events made many U.S. citizens more sympathetic to governmental largesse.

The Supreme Court was also affected by these events. Where *Lochner* had underscored free-market laissez-faire principles, *Parrish* highlighted the unequal bargaining power of employers and employees, as well as the oppression and exploitation of female workers. Freedom of contract, the Supreme Court said in *Parrish*, is not an ABSOLUTE and uncontrollable liberty.

Any lingering doubts as to the validity of *Lochner* were eliminated by the Supreme Court in *United States v. Carolene Products Co.*, 304 U.S. 144, 58 S. Ct. 778, 82 L. Ed. 1234 (1938), which held that courts must sustain state and federal laws that regulate economic interests, unless there is no rational basis to support them. By contrast the Court said that legislation that "appears on its face to be within a specific prohibition of the Constitution ... restricts ... political processes ... [or is] prejudic[ial] against discrete and insular minorities" WILL be subject to stricter scrutiny.

The *Carolene Products* case ushered in the post-*Lochner* era. During this era the Supreme Court has offered little constitutional protection for contract and other property rights. At the same time, the Court has offered increasing protection against legislation that touches upon

a fundamental constitutional right or denies a governmental benefit to a suspect class of persons, what the Court in *Carolene Products* called "discrete and insular minorities."

Fundamental rights include most of the rights ENUMERATED in the first ten amendments to the Constitution, as well as the right to privacy, the right to travel, the right to vote, and the right to education. Suspect classes include groups of persons who are discriminated against on the basis of race, gender, national origin, or other "immutable" genetic characteristics (FRONTIERO V. RICHARDSON, 411 U.S. 677, 93 S. Ct. 1764, 36 L. Ed. 2d 583 [1973]).

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Due Process of Law; Jurisprudence; Labor Law; Rational Basis Test; Substantive Law.

v LOCKE, JOHN

John Locke was a seventeenth-century English philosopher whose writings on political theory and government profoundly affected U.S. law and society. It is chiefly from Locke's *Two Treatises of Government* (1690) that U.S. politics takes its core premises of the ultimate SOVEREIGNTY of the people, the necessity of restraints on the exercise of arbitrary power by the executive or the legislature, and the ability of the people to revoke their social contract with the government when power has been arbitrarily used against them. The DECLARATION OF INDEPENDENCE and the U.S. Constitution are testaments to many of Locke's central ideas.

Locke was born in Wrington, Somerset, England, on August 29, 1632. His father, also John Locke, was an attorney, and a Calvinist with Puritan sympathies who supported the parliamentary side in England's struggle against King Charles I and fought on that side in the English CIVIL WAR of 1642. Despite this background Locke developed monarchist leanings while attending boarding school, which remained with him throughout his life.

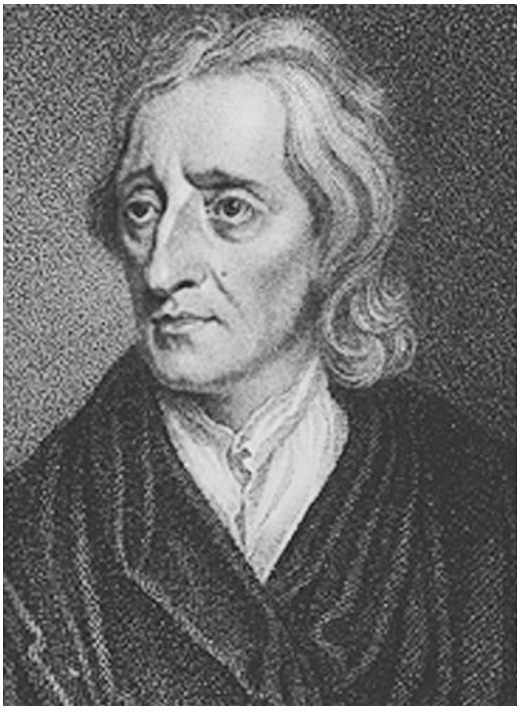
In 1652 Locke entered Oxford University, where he became interested in medicine and the newly developed discipline of experimental science. He collaborated with Robert Boyle, a founder of modern chemistry. Locke studied natural science and philosophy, concentrating on the principles of moral, social, and political laws. Following graduation in 1656, he earned a master of arts degree and was appointed a tutor at Oxford. He left teaching in 1662 and in 1666 decided to pursue medicine. In 1668 Locke was elected to the Royal Society.

In 1675, plagued with the symptoms of consumption, Locke moved to France in the hope of improving his health. He studied philosophy while abroad, then returned to England in 1679. His friendship with the duke of Shaftsbury made his stay in England a short one. Shaftsbury had been discovered as having been involved in a conspiracy to overthrow the king. Though Shaftsbury was acquitted of the charges, he fled to Holland in 1683. The king became suspicious of Locke and other friends of Shaftsbury, and had Locke closely watched. Knowing that his personal safety was at risk, Locke also chose exile in Holland in 1683. In 1684 his name appeared with 83 others on a list sent to The Hague by the English government, with the accusation that those named had committed TREASON and a demand for their EXTRADITION by the Dutch government. Locke went into hiding for a while, but soon returned to public life when the Dutch refused the extradition request.

IT IS ONE THING TO SHOW A MAN THAT HE IS IN ERROR, AND ANOTHER TO PUT HIM IN POSSESSION OF TRUTH.
—JOHN LOCKE

While in Holland, Locke wrote *Essay Concerning Human Understanding* (1690) and *Two Treatises. Essay* set forth Locke's theory that all human knowledge comes from experience. It stated that people are born without ideas—that is, with a blank mind—directly challenging the BELIEF that people are born with certain knowledge already implanted. It further stated that as a result people must formulate their ideas based on experience. This theory became the basis for the school of English philosophy called empiricism.

Two Treatises was written when England was divided over the rule of King James II. The Protestants wished to remove the king, who was a Roman Catholic. In the Glorious REVOLUTION



John Locke.
THE LIBRARY OF CONGRESS

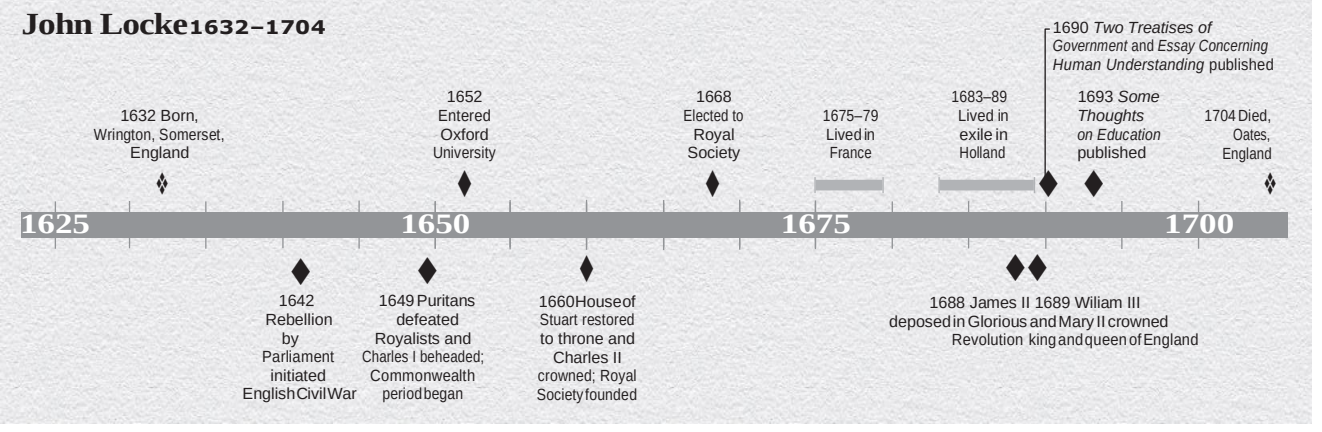
of 1688, James abdicated the throne and Parliament offered the crown to the Dutch prince William of Orange and his wife, Mary. The revolution re-formed government along the lines outlined by Locke in *Two Treatises,* which was published in 1690. England became a constitutional monarchy, controlled by Parliament, and greater measures of religious toleration and freedom of expression and thought were permitted.

Two Treatises was a blow to political absolutism. The first TREATISE was a refutation of the theory of the DIVINE RIGHT OF KINGS, which posits that monarchs derive their authority from God. The second treatise had the most lasting effect, for it set out a theory of politics that found its way into U.S. law.

In this second treatise, Locke maintained that people are naturally tolerant and reasonable, but that without a governing force, a certain amount of chaos and other inconvenience WILL occur. In his view people are basically pacific, communitarian, and good-natured. This belief contrasts with that of philosopher THOMAS HOBBES, which is that if left to their own devices, people will live in violent, selfish anarchy.

For Locke all people are inherently equal and free to pursue "life, liberty, health, and property." To do this they engage in a social contract in which they consent to give up a certain amount of power to a government dedicated to maintaining the well-being of the whole. They also give up one right, the right to judge and punish other persons, which is permitted in the state of nature. Apart from that concession to government, Locke argued, a person's individual right to freedom of thought, speech, and worship must be preserved. In addition, a person's private property must be preserved by the government. This compact between the people and their rulers legitimizes the government and explains the source of the rulers' power.

Locke believed that the people's consent to give up some power is the essential element of the social contract. Government is the trustee of the people's power, and any exercise of power by government is specifically for the purpose of serving the people. By extending the trust analogy, Locke legitimized the concept of revolution. If their trust is abused by their governors, the people—the grantors of the trust—have a right to revoke the trust. Once the trust has



been revoked, the people can assume the reins of government themselves or place them in new hands.

Locke attempted to soften this justification for revolution by claiming that revolution is appropriate only as a LAST RESORT and only in extreme circumstances. But he gave no real guidance as to how the people can be trusted to distinguish between inevitable temporary aberrations, which are to be endured, and a long series of abuses that justifies rebellion.

Two Treatises was well received in England, making Locke a respected figure once more and the intellectual leader of the WHIG PARTY. He returned to England in 1689, following the Glorious Revolution. He lived in semiretirement in Essex, in the company of friends such as the scientist Sir Isaac Newton. He died October 28, 1704, in Oates, Essex.

Two Treatises commanded great interest in the eighteenth century, providing justification for the American Revolution in 1776 and the French Revolution in 1789. The U.S. Declaration of Independence uses Locke's ideas of the law of nature, popular sovereignty, and the sanctity of the right of private property to set forth the premises of U.S. political thought. The U.S. Constitution, with its separation of church and state and its guarantee of personal freedoms, draws on Locke's work.

In the United States, Lockean thought continues to justify resistance to executive tyranny, such as the despotism that was exhibited by President RICHARD M. NIXON in the WATERGATE affair in the early 1970s and led to his resignation in 1974. Locke's second treatise provides support for U.S. constitutional ideals of INALIENABLE rights and personal liberty. The FIRST AMENDMENT would be unthinkable without Locke's philosophical foundation.

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LOCKOUT

Employer's withholding of work from employees in order to gain concession from them; it is the employers' counterpart of the employee's strike. Refusal by the employer to furnish available work to its regular employees, whether refusal is motivated by the employer's desire to protect itself against economic injury, by its desire to protect itself at the bargaining table, or by both.

CROSS REFERENCES

Labor Law; Labor Union.

LOCKUP

A place of detention in a police station, court or other facility used for persons awaiting trial. In corporate law, a slang term that refers to the setting aside of securities for purchase by friendly interests in order to defeat or make more difficult a takeover attempt. A lockup option is a takeover defensive measure permitting a friendly suitor to purchase divisions of a corporation for a set price when any person or group acquires a certain percentage of the corporation's shares. To be legal, such agreement must advance or stimulate the bidding process, to best serve the interests of the shareholders through encouraged competition.

v LOCKWOOD, BELVA ANN

Belva Ann Lockwood achieved prominence as the first woman to be admitted to argue cases before the U.S. Supreme Court. In addition to her legal career, she was active in many phases of the campaign for women's rights.

Lockwood was born October 24, 1830, in Royalton, New York. A graduate of Genesee College in Lima, New York, in 1857, Lockwood received an honorary master of arts degree from Syracuse University in 1871 and a doctor of laws degree in 1908. Before her admission to the Washington, D.C., bar in 1873, Lockwood taught school from 1857 to 1868. She began her fight for women's rights with her work advocating the

Belva A. Lockwood.
LIBRARY OF CONGRESS

I KNOW WE CAN'T ABOLISH PREJUDICE THROUGH LAWS, BUT WE CAN SET UP GUIDELINES FOR OUR ACTIONS BY LEGISLATION.
—BELVA LOCKWOOD

passage of a bill granting female government employees equal pay for equal work.

In 1879 Lockwood further advanced the cause of women to the judiciary with her participation in the enactment of a bill permitting women to practice law before the U.S. Supreme Court. As a result she became the first woman to be admitted to this court and was subsequently admitted to practice before the former U.S. COURT OF CLAIMS.

Lockwood continued her legal career while participating in reform movements, notably those for temperance and women's SUFFRAGE. At the height of her popularity in the 1880s, Lockwood was nominated by the Equal Rights party as a candidate for PRESIDENT OF THE UNITED STATES in 1884 and 1888, the first woman to receive this honor.

In 1896 Lockwood was chosen to represent the United States at the Congress of Charities and Corrections held in Switzerland. After her return she continued her work in the women's rights movement and was instrumental in the formulation of the law granting women residents of the DISTRICT OF COLUMBIA equal property rights and equal claims to the custody of children. She also drafted an AMENDMENT to the statehood bills of Oklahoma, Arizona, and New Mexico, allowing women in these states the right to vote.

A staunch advocate of peace, Lockwood served as a representative to the Universal Peace Congress held in Paris in 1889 and participated at the International Peace Bureau at Bern, Switzerland, in 1892. She died May 19, 1917, in Washington, D.C.

LOCO PARENTIS

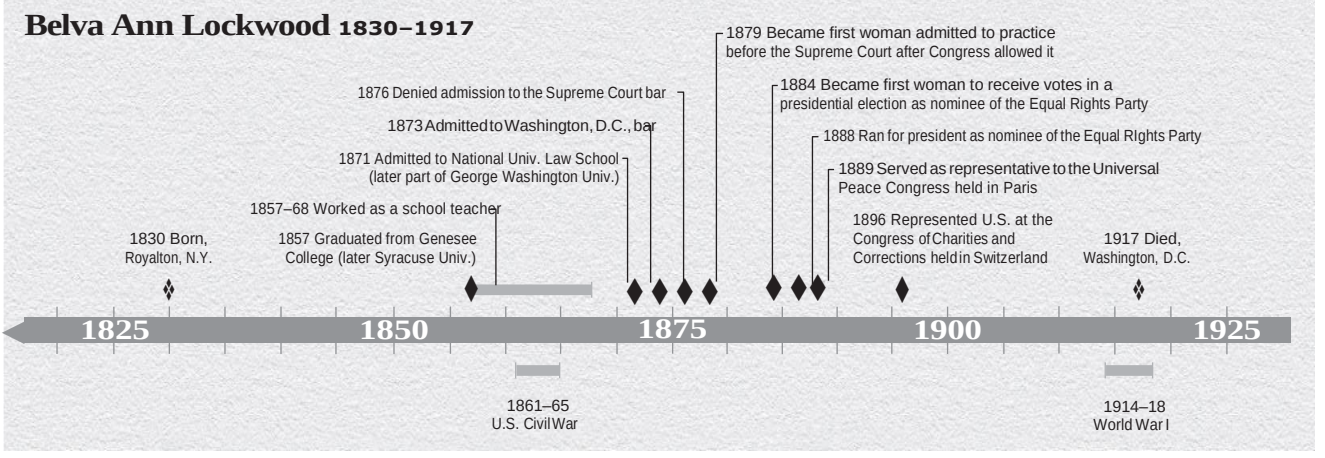
[Latin, The place of a parent.] *A description of the relationship that an adult or an institution assumes toward an infant or minor of whom the adult is not a parent but to whom the adult or institution owes the obligation of care and supervision.*

The term is usually designated IN LOCO PARENTIS.

LOCUS

Latin, Place; place where a thing is performed or done.

For example, the *locus delicti* is the place where an accident or crime occurred.

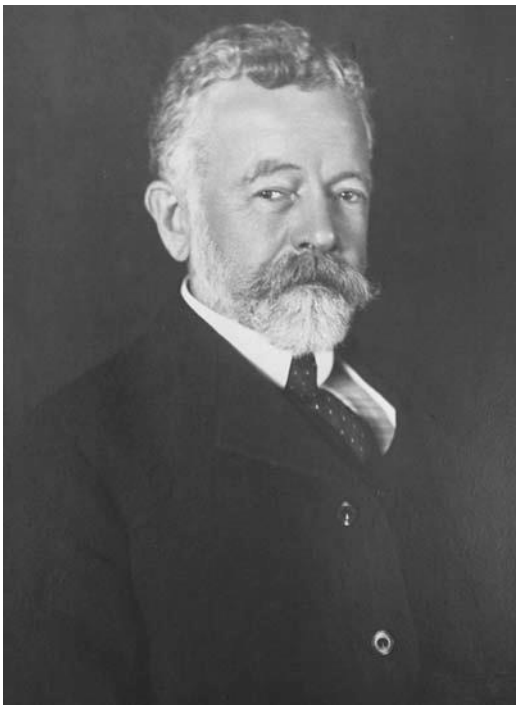


v LODGE, HENRY CABOT

Henry Cabot Lodge helped write the SHERMAN ANTI-TRUST ACT of 1890 (15 U.S.C.A. § 1 et seq.). He was an enthusiastic supporter of the SPANISH-AMERICAN WAR of 1898 and advocated military power as the United States' best tactic for peace. He believed firmly in the principles of the MONROE DOCTRINE, by which the United States sought to protect nations in the Western Hemisphere from European intrusion. Although he opposed strong control by the federal government, he believed that in some circumstances moderate government regulation was essential to prevent SOCIALISM. Lodge was a conservative Republican U.S. senator from 1893 to 1924. He successfully fought to defeat U.S. entry into President Woodrow Wilson's newly proposed LEAGUE OF NATIONS at the end of WORLD WAR I. He chaired the Senate Foreign Relations Committee from 1918 to 1924 and influenced U.S. foreign policy in the first quarter of the twentieth century. He also was a prolific writer, most notably of a series of biographies, and the grandfather of Henry Cabot Lodge, Jr., a Republican senator in 1937–44 and 1947–53.

Lodge was born May 12, 1850, in Boston. The families of his father, John Ellerton Lodge, and mother, Anna Cabot Lodge, were wealthy and of high social standing. Lodge graduated from Harvard in 1871, and married Anna Cabot Mills ("Nannie") Davis the day after his graduation ceremony. He attended Harvard Law School from 1872 to 1874, and in 1874 made his first entry into politics as a delegate to the Republican state convention.

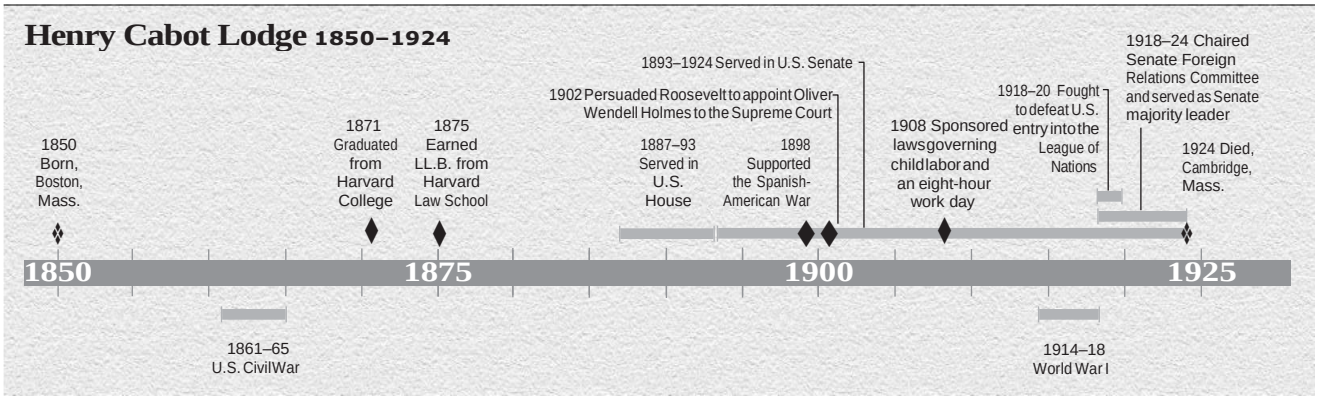
Lodge taught American colonial history at Harvard for a year and then turned to writing, producing a biography of his great-grandfather, a colonial history, and various magazine articles, among other works. He was an editor on the *International Review* magazine for four years, and wrote a set of books called the American Statesman Series, on GEORGE WASHINGTON, Washington Irving, and DANIEL WEBSTER, among others.



Henry Cabot Lodge.
LIBRARY OF CONGRESS

In the late 1870s he wrote articles on election reform, gave an Independence Day address, and served two one-year terms in the Massachusetts General Court. In 1883 he chaired the Republican State Central Committee and met THEODORE ROOSEVELT, with whom he would remain close friends throughout his life.

Lodge was elected to the House in 1886, where he served for six years. He chaired the House Committee on Elections, sponsored the



Federal Elections Bill, and introduced a bill prohibiting entry into the United States by illiterate immigrants (later vetoed by President Grover Cleveland). In 1890 Lodge helped write the Sherman Anti-Trust Act, the first federal law to control growing centralization of economic power by monopolistic corporations.

In 1893 Lodge entered the Senate, where he served until his death in 1924. As a senator he was a strong supporter of the Spanish-American War, in which two of his three sons served. He supported U.S. imperialism during the presidency of Theodore Roosevelt. In 1902 he helped persuade Roosevelt to appoint OLIVER WENDELL HOLMES, JR., to the U.S. Supreme Court; Holmes's fundamentally new approach to the judicial process—which rejected the notion of legal principles as absolutes—changed U.S. law. Also in the early 1900s, he sponsored a child LABOR LAW (May 28, 1908, ch. 209, 35 Stat. 420) in Washington, D.C., and an American Federation of Labor law mandating an eight-hour workday. In 1906 Lodge worked on Roosevelt's Food and Drug Act (ch. 3915, 34 Stat. 768).

LET EVERY MAN HONOR AND LOVE THE LAND OF HIS BIRTH . . . [BUT] IF A MAN IS GOING TO BE AN AMERICAN AT ALL LET HIM BE SO WITHOUT QUALIFYING ADJECTIVES; AND IF HE IS GOING TO BE SOMETHING ELSE, LET HIM DROP THE WORD AMERICAN FROM HIS PERSONAL DESCRIPTION.
—HENRY CABOT LODGE

From 1918 to 1924 Lodge chaired the Senate Foreign Relations Committee and was the Senate majority leader. He also worked adamantly to foil President Wilson's efforts to establish the League of Nations. Lodge disliked both the policies and the personality of Wilson.

Wilson attempted to link the passage of his League of Nations with the signing of the peace TREATY that would officially end World War I. Lodge attacked this approach, accusing Wilson of jeopardizing the peace process for the sake of his project. Lodge also was chief among Wilson's critics for two other actions. In an era in which presidents rarely left the country, Wilson traveled to Europe to make a highly publicized case for his League of Nations. Although he was well received by the Europeans with whom he met, the trip was not favorably viewed by many in the United States. Second, he took with him a small group of men that included only Democrats.

In 1919 Lodge addressed the Senate about the "crudeness and looseness of expression" of the proposed League of Nations. He cited a direct conflict between Wilson's league and the Monroe Doctrine, which he said dictated that "American questions be settled by America alone." He also questioned whether the United States could follow up on some of the promises outlined in Wilson's proposal, and cited a potential loss of U.S. control over IMMIGRATION.

Lodge and two other men crafted a declaration listing their objections to the proposed League of Nations, the primary ones involving congressional rights. Lodge then circulated the declaration through the Republican senators seeking signatures of support, a process called a round-robin, and received thirty-seven signatures, more than enough to indicate strong support for the declaration. Lodge led a lengthy debate on the Senate floor, followed by hearings in which a variety of representatives from around the world were allowed to testify on a broad range of topics. Witnesses spoke, for example, on Irish independence, which had little relevance to the League of Nations but which took time on the floor. Lodge also read the entire text of Wilson's proposal, which took two weeks to complete, in order to wear down Wilson and his supporters and to encourage a deadlock.

Ultimately, Congress did deadlock on the issue, and the U.S. public decided the fate of the league with the November 1920 presidential election, when James Cox, the Democratic candidate, lost to WARREN G. HARDING, who opposed the league.

In his last years, Lodge returned to writing and spent time with his family. He died November 9, 1924, at age 74.

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LODGER

An occupant of a portion of a dwelling, such as a hotel or boardinghouse, who has mere use of the premises without actual or exclusive possession thereof. Anyone who lives or stays in part of a building that is operated by another and who does not have control over the rooms therein.

LOG ROLLING

A legislative practice of embracing in one bill several distinct matters, none of which, perhaps, could singly obtain the assent of the legislature, and then procuring its passage by a combination

of the minorities in favor of each of the measures into a majority that will adopt them all.

Practice of including in one statute or constitutional amendment more than one proposition, inducing voters to vote for all, notwithstanding they might not have voted for all if amendments or statutes had been submitted separately.

LOGAN ACT

The Logan Act (18 U.S.C.A. § 953 [1948]) is a single federal statute making it a crime for a citizen to confer with foreign governments against the interests of the United States. Specifically, it prohibits citizens from negotiating with other nations on behalf of the United States without authorization.

Congress established the Logan Act in 1799, less than one year after passage of the ALIEN AND SEDITION ACTS, which authorized the arrest and DEPORTATION of aliens and prohibited written communication defamatory to the U.S. government. The 1799 act was named after Dr. George Logan. A prominent Republican and Quaker from Pennsylvania, Logan did not draft or introduce the legislation that bears his name, but was involved in the political climate that precipitated it.

In the late 1790s a French trade EMBARGO and jailing of U.S. seamen created animosity and unstable conditions between the United States and France. Logan sailed to France in the hope of presenting options to its government to improve relations with the United States and quell the growing anti-French sentiment in the United States. France responded by lifting the embargo and releasing the captives. Logan's return to the United States was marked by Republican praise and Federalist scorn. To prevent U.S. citizens from interfering with negotiations between the United States and foreign governments in the future, the Adams administration quickly introduced the bill that would become the Logan Act.

The Logan Act has remained almost unchanged and unused since its passage. The act is short and reads as follows:

> Any citizen of the United States, wherever he may be, who, without authority of the United States, directly or indirectly commences or carries on any correspondence or intercourse with any foreign government or any officer or agent thereof, with intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the United States, shall be fined under this title or imprisoned not more than three years, or both.
>
> This section shall not abridge the right of a citizen to apply, himself or his agent, to any foreign government or the agents thereof for redress of any injury which he may have sustained from such government or any of its agents or subjects.

The language of the act appears to encompass almost every communication between a U.S. citizen and a foreign government considered an attempt to influence negotiations between their two countries. Because the language is so broad in scope, legal scholars and judges have suggested that the Logan Act is unconstitutional. Historically, the act has been used more as a threat to those engaged in various political activities than as a weapon for prosecution. In fact, Logan Act violations have been discussed in almost every administration without any serious attempt at enforcement, and to date there have been no convictions and only one recorded indictment.

One example of the act's use as a threat of prosecution involved the Reverend JESSE JACKSON. In 1984 Jackson took well-publicized trips to Cuba and Nicaragua and returned with several Cuban political prisoners seeking ASYLUM in the United States. President RONALD REAGAN stated that Jackson's activities may have violated the law, but Jackson was not pursued beyond a threat.

In 1984 Democratic presidential candidate Jesse Jackson met with Cuban president Fidel Castro and later described a ten-point agreement the two had reached. His negotiations with Castro may have violated the Logan Act, but Jackson was not prosecuted.

AP IMAGES

The only Logan Act indictment occurred in 1803. It involved a Kentucky newspaper article that argued for the formation in the western United States of a separate nation allied to France. No prosecution followed.

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LOGGING

The cutting of, or commercial dealing in, tree trunks that have been cut down and stripped of all branches.

The statutes in certain jurisdictions provide for the marking of logs for the purpose of identification. Once a log is marked, its mark must be recorded, as must any change in ownership of the marked logs.

Trees which are standing upon land can become objects of PERSONAL PROPERTY prior to their SEVERANCE from the soil and, therefore, a change in the ownership of the land would have no effect upon ownership of the trees. Standing timber can be conveyed separately from the property upon which it was grown. If this occurs, two separate and distinct property interests are created: one in the land and one in the timber.

A purchaser of standing timber may enter onto the land for the purpose of cutting and removing the timber. Contracts for the sale of standing timber may limit the time during which the right of entry can continue.

The public may generally float logs on any stream that is capable of being so used in its natural state. When necessary, the right to use a stream includes the incidental right to use the banks, at least below the high-water mark.

LOGGING IN

A colloquial term for the process of making the initial record of the names of individuals who have been brought to the police station upon their arrest.

The process of logging in is also called booking.

LONG-ARM STATUTE

A state law that allows the state to exercise jurisdiction over an out-of-state defendant, provided that the prospective defendant has sufficient minimum contacts with the forum state.

JURISDICTION over an out-of-state DEFENDANT is referred to as extraterritorial IN PERSONAM jurisdiction. In personam jurisdiction, also known as PERSONAL JURISDICTION, allows a court to exercise jurisdiction over an individual, and is the fundamental requirement necessary for a court to hear the merits of a claim. Historically, a state could exercise jurisdiction only within its territorial boundaries; therefore, a nonresident defendant could be brought into court only when SERVICE OF PROCESS was effected while that defendant was within the boundaries of the state. The U.S. Supreme Court upheld this principle, and raised it to a constitutional level, when it stated that judgments entered by a court without such jurisdiction were violations of the Due Process Clause of the U.S. Constitution (*Pennoyer v. Neff*, 95 U.S. 714, 24 L. Ed. 565 [1877]).

The requirement of physical presence within the state's boundaries was expanded in *International Shoe Co. v.Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945). In *International Shoe,* the Supreme Court held that due process required that the defendant have "certain minimum contacts" with the forum in order for a state to assert jurisdiction, and that such jurisdiction may not offend "traditional notions of fair play and substantial justice."

Since *International Shoe,* the Supreme Court has set forth several criteria to be used in analyzing whether jurisdiction over a nonresident is proper. These criteria require (1) that the defendant has purposefully availed himself or herself of the benefits of the state so as to reasonably foresee being haled into court in that state; (2) that the forum state has sufficient interest in the dispute; and (3) that haling the defendant into court does not offend "notions of fair play and substantial justice."

Following the Court's lead in *International Shoe*, individual states began enacting long-arm statutes setting forth their requirements for personal jurisdiction over nonresidents. Illinois was the first state to do so. Its statute (Ill. Rev. Stat. chap. 110, para. 17 [1955]) allowed service of process outside the state on nonresident individuals and corporations in actions arising

out of (1) the transaction of any business in the state; (2) the commission of a TORTIOUS act within the state; (3) the ownership, use, or possession of REAL ESTATE in the state; or (4) a contract to insure any person, property, or risk located in the state. The Illinois statute became a template for many state long-arm statutes.

In 1963 the Uniform Interstate and International Procedure Act was promulgated by the COMMISSIONERS ON UNIFORM LAWS. The Uniform Act was similar to the Illinois statute, but also included a provision authorizing jurisdiction in the event that an act or omission outside the state caused injury in the state. This Uniform Act also became a model for other states in developing their long-arm statutes.

Since 1963 all states and the DISTRICT OF COLUMBIA have enacted long-arm statutes. Long-arm statutes tend to fall into one of two categories. The first enumerates factual situations likely to satisfy the minimum-contacts test of *International Shoe*. The second type is much broader: it provides jurisdiction over an individual or corporation as long as that jurisdiction is not inconsistent with constitutional restrictions. If such a statute enumerates requirements for jurisdiction, the facts of the situation must fall within one of those requirements. The court must then determine whether the procedural due process requirements of both the state and federal constitutions have been met.

The long-arm statute has seriously been challenged with the emergence of the Internet. Since the late 1990s, lawsuits that center on Internet commercial and DEFAMATION disputes have been commonplace. A key issue has been whether plaintiffs may sue and enforce judgment in their state of residence or whether they must file suit in the state where the defendant resides or has its place of business. In *Zippo Manufacturing v. Zippo Dot Com*, 952 F. Supp.1119 (W.D. Pa. 1997), the court announced a standard that showed promise for analyzing this question.

Zippo Manufacturing, the maker of the well-known Zippo lighter, discovered that another company, Zippo Dot Com, had acquired the domain names "zippo.com," "zippo-news.com," and "zippo.net." From these sites, Zippo Dot Com, based in California, ran a news distribution service with nearly 150,000 paying customers, including some 3,000 in Pennsylvania, Zippo Manufacturing's state of incorporation. Zippo Dot Com's contacts with Pennsylvania were almost entirely electronic, consisting of the contract filled out online by new customers and access agreements with seven Internet service providers in that state. Zippo Manufacturing sued Zippo Dot Com in the Western District of Pennsylvania for a variety of trademark offenses relating to the domain names owned by the latter. The news service filed a motion to dismiss for lack of personal jurisdiction.

The court denied Zippo Dot Com's motion and concluded that the news service does do business in Pennsylvania; therefore, jurisdiction was established. In its RULING, the court divided websites into three categories based on the PRESUMPTION that the exercise of personal jurisdiction is "directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet." If a defendant enters into contracts that involve the "knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper." At the opposite end are situations where a defendant runs a "passive website" that merely contains posted information accessible to anyone. The third category involves interactive websites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the site.

Owing to the different types of long-arm statutes, as well as various court interpretations of these statutes, the relevant state laws must be examined when determining whether a prospective nonresident defendant falls under the jurisdiction of a state and may be brought into that state's court.

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LOOPHOLE

An omission or ambiguity in a legal document that allows the intent of the document to be evaded.

Loopholes come into being through the passage of statutes, the enactment of regulations, the drafting of contracts or the decisions of courts. A loophole allows an individual or group to use some gap in the restrictions or requirements of the law or contract for personal advantage without technically breaking the law or contract. In response, lawmakers and regulators work to pass reforms that will close the loophole. For example, in the federal tax code, a long-standing loophole was the so-called tax shelter, which allowed taxpayers to reduce their tax debt by making investments. Although not closed entirely, this loophole was substantially reduced by the TAX REFORM ACT OF 1986 (Pub. L. No. 99-514, 100 Stat. 2085 [codified as amended in numerous sections of 26 U.S.C.A.]).

Loopholes exist because it is impossible to foresee every circumstance or course of conduct that will arise under, or in response to, the law. Loopholes often endure for a time because they can be difficult to close. Those who benefit from a loophole will lobby legislators or regulators to leave the loophole open. In the case of ELECTION CAMPAIGN FINANCING, it is the legislators themselves who benefit. The Federal Election Campaign Act Amendments of 1974 (Pub. L. No. 93-443, 88 Stat. 1263 [1974] [codified as amended in scattered sections of 2 U.S.C.A. §§ 431–455 (1988)]) were passed to limit private financing of federal election campaigns. But loopholes in the law allow these limits to be circumvented. Through one loophole, intermediaries can pool or "bundle" contributions so that the limit is not legally exceeded. Through another, money raised specifically for building political parties (soft money) is funneled into campaigns.

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CROSS REFERENCE

Lobbying.

LOSS

Diminution, reduction, depreciation, decrease in value; that which cannot be recovered.

The term *loss* is a comprehensive one, and relative, since it does not have a limited or absolute meaning. It has been used interchangeably with *damage, deprivation,* and *injury.*

In the law of insurance, a loss is the ascertained LIABILITY of the insurer, a decrease in value of resources, or an increase in liabilities. It refers to the monetary injury that results from the occurrence of the contingency for which the insurance was taken out.

Loss of earning capacity is an injury to an individual's ability to earn wages at a future time and may be recovered as an element of damages in a tort case.

LOSS OF CONSORTIUM

See CONSORTIUM.

LOSS OF SERVICES

A deprivation of a family member, such as a parent or spouse, of the right to benefit from the performance of various duties, coupled with the privation of love and companionship, provided by the victim of a personal injury or wrongful death.

PECUNIARY awards for loss of services are a type of COMPENSATORY DAMAGES, intended to serve as RESTITUTION for injuries sustained by family members. Family relationships can be interfered with in various ways. Along with economic losses from medical expenses, there might exist pain and suffering as well as loss of consortium and society.

Damages for loss of services are recoverable by a parent whose child has been killed or injured; by a husband or wife whose spouse has been killed or injured; and, in some instances, by a father whose daughter has been a victim of seduction.

The parent and child relationship involves many mutual duties, privileges, and obligations. A parent has the right to the services of his or her unemancipated infant. When a child is injured by tort in a manner which disables the child from performing services, a parent has a CAUSE OF ACTION to recover for the value of these services. This cause of action exists even where a child was not actually performing any services before being harmed. This RIGHT OF ACTION stems from the parental interest in the custody, society, companionship, and affection of his or her offspring.

A husband may sue for the loss of personal services of his wife, including the performance of various household duties as well as sexual relationships, companionship, and affection.

LOST INSTRUMENTS

Documents that cannot be located after a thorough, careful, and diligent search has been made for them.

In some jurisdictions, documents that have been stolen are held to be lost. An instrument that the owner has voluntarily and intentionally destroyed in order to cancel its legal effects is not a lost instrument, nor is an instrument that has been mutilated. Generally the loss of a written instrument does not affect the validity of the transaction that it represents, since a copy can usually be established in court. An action to restore a lost instrument is not one for relief against a wrong but rather one to enforce the plaintiff's interests. It can be initiated immediately subsequent to the loss, and all interested persons should be made parties to, and should be given notice of, such proceedings.

An action to establish a lost instrument indicating ownership of land, such as a deed, can be commenced by anyone who has an interest in the subject matter, such as an HEIR of a deceased property owner. This type of case is analogous to a QUIET TITLE ACTION.

LOT

In sales, a parcel or single article that is the subject matter of a separate sale or delivery, irrespective of whether or not it is adequate to perform the contract. In the securities and commodities market, a specific number of shares or a particular quantity of a commodity specified for trading. In the law of real estate, one of several parcels into which real property is divided.

A lot is ordinarily one of SEVERAL contiguous pieces of land of which a block is composed. Real property is commonly described in terms of lot and block numbers on recorded maps and plats.

v LOTT, CHESTER TRENT

Trent Lott served the U.S. government for more than three decades. He was elected to both houses of the U.S. Congress and served subsequent terms as a member from the state of Mississippi. Comments suggesting his endorsement of segregationist views resulted in an uproar that led to his resignation as the Senate Majority Leader in December 2002.

As a U.S. Senator from Mississippi, Trent Lott was a major political figure in the nation's capitol. He first came to Washington as a Democratic congressional aide in the early 1960s. Lott is best-known for his conservative views, having served as a Republican in both the House of Representatives and the U.S. Senate. He was recognized for his leadership skills in Congress and was able to organize support for important issues among Republicans and Democrats. Paul Weyrich, a radio news commentator, once described Lott "as a wily Southerner. He likes to make deals, but sometimes, when he feels a great principle is at stake, he can be tough as nails." Lott was elected by fellow senators as Senate majority leader on December 3, 1996.

Born on October 9, 1941, in Grenada County, Mississippi, Chester Trent Lott moved with his family to the costal town of Pascagoula. His father, also named Chester, was a shipyard worker who later tried his hand in the furniture business. In a *U.S. News & World Report* interview, Lott described his father as "handsome and outgoing, and I always thought he might actually run for office someday."

Lott entered the University of Mississippi (Ole Miss) in the fall of 1959. While at Ole Miss, Lott had his first real experience in politics. During his freshman year, he pledged the Sigma Nu fraternity. While he participated in Sigma Nu activities, Lott made many friends among members of other fraternities and independent student groups. Eventually, he was elected as president of both Sigma Nu and the university's interfraternity council. Cheerleaders at Ole Miss

Trent Lott.
AP IMAGES

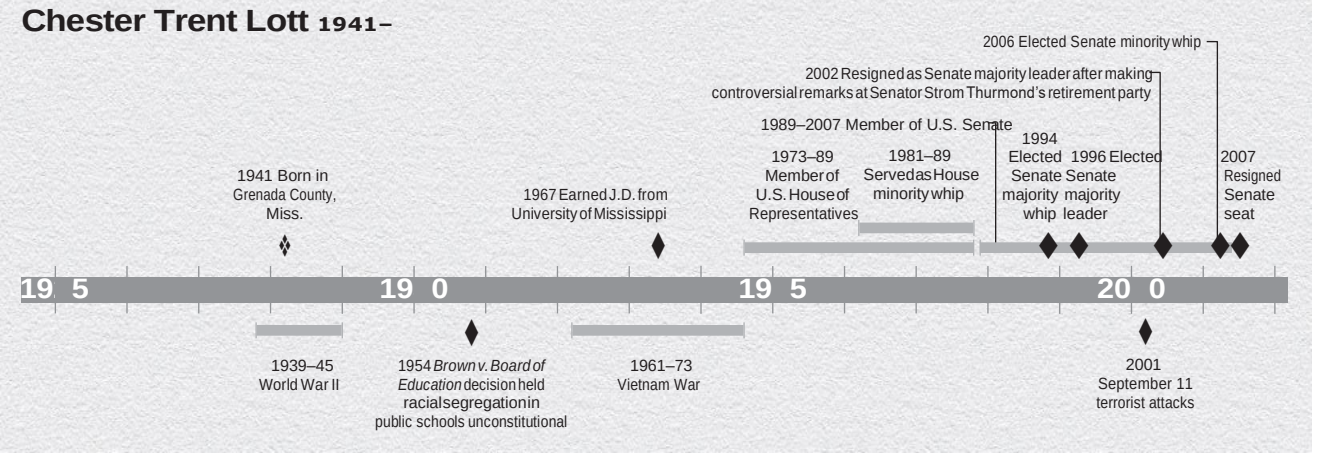
were also elected positions, and running for cheerleader provided Lott with another opportunity to gain political skills in forming political blocks, cutting deals and doing door-to-door precinct work.

No African American students attended the University of Mississippi when Lott first entered the school. During Lott's senior year, on September 30, 1962, Air Force veteran JAMES MEREDITH enrolled at Ole Miss, protected by armed U.S. marshals. The small group was confronted by rock-throwing students and nonstudent protestors in violent demonstrations. By the time the violence ended, two people were dead and many others were injured and arrested. Lott worked to keep Sigma Nu fraternity members from taking part.

However, four decades after Lott graduated from Ole Miss, evidence surfaced that Lott had helped to lead a successful battle to prevent blacks from joining his fraternity. Former CNN President Tom Johnson, a Sigma Nu member at the University of Georgia, told *Time* magazine, "Trent was one of the strongest leaders in resisting the integration of the national fraternity in any of the chapters." Due to the strong resistance among southern chapters, Sigma Nu remained segregated during that period.

Graduating with a bachelor's degree in public administration in the spring of 1963, Lott enrolled in the Ole Miss law school. While Lott attended law school, the VIETNAM WAR was expanding in scope and troop commitments. Like other college students Lott received a student deferment from the draft. By the time he had graduated from law school in 1967, Lott had married Patricia (Tricia) Thompson of Pascagoula and, under Selective Service rules, obtained a hardship exemption due to the birth of their first child, also named Chester.

Lott and his family returned to Pascagoula. For a brief period, Lott worked in a private law firm, leaving after less than a year, when he was offered a top staff job by Congressman William M. Colmer, a Mississippi Democrat. The Lott family moved to Washington, D.C., in 1968. Political skills learned at Ole Miss in organizing and influencing people earned Lott a reputation as an effective and able congressional aide. When Congressman Colmer announced his



retirement from the House of Representatives in 1972, Lott announced his candidacy as a Republican to seek the vacant office. Lott was able to win Comer's endorsement and support. He had a well-organized and tireless campaign. With the aid of the landslide re-election of President RICHARD NIXON, he was able to win the House seat with a vote margin of 55 percent.

Arriving in Washington as a freshman Representative, Lott was appointed to membership on the House Judiciary Committee. As the youngest member of the committee, Lott became involved in the 1974 hearings to IMPEACH President Nixon. The president had been implicated in the break-in of the Democratic National Committee headquarters at an office complex called WATERGATE. After the president released tape recordings and transcripts indicating his involvement and a cover-up of the crime, Lott reversed his position as a staunch supporter and joined others in the call for the president's resignation, which occurred less than a week later.

Although Lott had vowed to fight against increased government controls from his seat in the House, he actually supported more federal spending for ENTITLEMENT programs, farm subsidies, public works projects, and the military. During his 16-year tenure in the U.S. House of Representatives, Lott was never credited with authoring any major legislation. However, he won praise for his work on tax and budget reform. He was an active member of the House, and served on the powerful House Rules Committee from 1975–89.

With the support of his fellow Representatives, Lott was elected and served as minority whip from 1981–89. As minority whip, he was the second ranking Republican in the House of Representatives. He was also named chair of the Republican National Convention's platform committees in 1980 and 1989. Lott, however, did not always support the legislative agenda of his political party. When President RONALD REAGAN proposed a tax-reform bill in 1985, Lott used his political power as minority whip to oppose the measure. Two years later, Lott joined with Democrats to override a presidential veto of a highway spending bill that included several highway projects in his home district.

When Mississippi Democratic Senator John Stennis retired in 1988, Lott announced that he would seek the vacant Senate seat. He won with a 54 percent majority. As a Senator, Lott continued to focus his political talents on building coalitions and was appointed as a member of the Ethics Committee. He was later appointed as a member of the powerful Senate Budget Committee. Continuing his climb through the ranks of the Senate, Lott was elected as the secretary of the Senate Republican Conference in 1992. In 1994 he won the election for Senate majority whip by a one-vote margin, making him the first person to be elected whip in both houses of Congress.

Lott's experiences as House minority whip helped him to establish a highly-organized whip system in the Senate. Individual members of Congress were drafted to organize and track colleagues on a regional basis. These regional whips provided daily briefings to Lott on crucial votes. One of the regional whips was also assigned to be on the Senate floor at all times. Lott's ability to work with both parties helped to end what was described in the popular press as budget gridlock. When the Senate majority leader, Bob Dole, announced his plans to retire from the Senate in order to run for president, Lott used his well-controlled whip organization to campaign for the vacant leadership position. His organizational and political skills were rewarded, and he was elected senate majority leader on June 13, 1996.

The Senator's stances on other major issues facing the nation were widely known. He articulated his views on numerous radio and television interview shows. He also took advantage of the electronic media and maintained a website that stated his position on key political and national issues. On the issue of a balanced national budget, Lott declared, "I understand the concerns regarding the Balanced Budget AMENDMENT and want to assure you that I do not take amending our Constitution lightly. However, having watched many futile attempts to reduce the DEFICIT through legislation, I am convinced that an amendment to our Constitution is necessary." Lott also described his position concerning prayer in public schools: "I have consistently advocated strong legislative action in support of the rights of students who wish to participate in voluntary prayer in their schools."

Lott was re-elected as Senate majority leader in 2002. However, at a retirement party for Senator Strom Thurmond, Lott praised Thurmond's 1948 segregationist's campaign for president, suggesting that the nation would

A LOT OF ... WHAT IS WRONG HERE IS NOT ENOUGH COMMUNICATION, NOT ENOUGH UNDERSTANDING OF HOW PEOPLE FEEL AND HOW ... THERE HAS BEEN IMMORAL LEADERSHIP IN MY PART OF THE COUNTRY FOR A LONG TIME.
—CHESTER "TRENT" LOTT

have been better off if Thurmond had been elected. The comments, which Lott claimed were lighthearted and intended as a compliment to Thurmond, soon became the center of a media frenzy and serious debate among members of Congress. President GEORGE W. BUSH called the comments "offensive" and "wrong." Lott apologized on a number of occasions, but to no avail. Both Democrat and Republican members of Congress criticized the remarks, including his friends in the Senate.

A number of media sources reviewed prior public comments by Lott and discovered that he had made similar remarks in the past. In fact, in 1980 he made a very similar claim endorsing Thurmond after Thurmond had made a speech in support of Ronald Reagan, who was then a candidate for president. In December 2002, Bill Frist (R.-Tenn.) claimed that he had enough votes to replace Lott as Senate majority leader. However, Lott resigned from the position before any vote took place. Lott retained his seat in the Senate, but the events in 2002 and early 2003 clouded the public's view of him.

In 2006 Lott was re-elected to the U.S. Senate in Mississippi, defeating Democrat Erik R. Fleming, and then was elected minority whip. It was rumored that Lott had wanted to leave the Senate for quite some time, but that he stayed because of Hurricane Katrina and its aftermath. In late 2007 he announced his resignation, stating that he and his wife just wanted to do other things. Lott's term would've ended in 2012. By resigning in 2007, he beat a new law that required former house and senate members to wait two years before working as lobbyists, and only had to wait one year.

While serving in Congress, Lott's ability to mobilize his fellow representatives and senators in support of key legislation was recognized with prominent positions in both houses, as Lott has the distinction of being the first Southerner named House minority whip and the first person elected whip in both houses of Congress.

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LOTTERY

See STATE LOTTERY.

LOUISIANA CIVIL CODE

See CIVIL LAW.

LOUISIANA PURCHASE

The Louisiana Purchase of 1803 doubled the size of the United States, gave the country complete control of the port of New Orleans, and provided territory for westward expansion. The 828,000 square miles purchased from France formed completely or in part thirteen states: Arkansas, Colorado, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, and Wyoming. President THOMAS JEFFERSON was unsure if the Constitution authorized the acquisition of land, but he found a way to justify the purchase.

France originally claimed the Louisiana Territory in the seventeenth century. In 1763 it ceded to Spain the province of Louisiana, which was about where the state of Louisiana is today. By the 1790s U.S. farmers who lived west of the Appalachian Mountains were shipping their surplus produce by boat down rivers that flowed into the Gulf of Mexico. In 1795 the United States negotiated a TREATY with Spain that permitted U.S. merchants the right of deposit at New Orleans. This right allowed the merchants to store their goods in New Orleans without paying duty before they were exported.

In 1800 France, under the leadership of Napoléon, negotiated a secret treaty with Spain that ceded the province of Louisiana back to France. President Jefferson became concerned that France had control of the strategic port of New Orleans, and sought to purchase the port and West Florida. When France revoked the right of deposit for U.S. merchants in 1802, Jefferson sent JAMES MONROE to Paris to help ROBERT R. LIVINGSTON convince the French government to complete the sale. These statesmen warned that the United States would ally itself with England against France if a plan were not devised that settled this issue.

Monroe and Livingston were authorized by Congress to offer up to $2 million to purchase

Map showing area of Louisiana Purchase and surrounding areas. ILLUSTRATION BY CHRISTINE O'BRYAN. GALE GROUP.

the east bank of the Mississippi; Jefferson secretly advised them to offer more than $9 million for Florida and New Orleans.

Napoléon initially resisted U.S. offers, but changed his mind in 1803. He knew that war with England was imminent, and realized that if France were tied down with a European war, the United States might annex the Louisiana Territory. He also took seriously the threat of a U.S.-English alliance. Therefore, in April 1803 he instructed his foreign minister, Charles-Maurice de Talleyrand-Périgord, to negotiate with Monroe and Livingston for the United States' purchase of the entire Louisiana Territory. Acting on their own, the U.S. negotiators agreed to the price of $15 million, with $12 million paid to France and $3 million paid to U.S. citizens who had outstanding claims against France. The purchase agreement, dated April 30, was signed May 2 and reached Washington, D.C., in July.

President Jefferson endorsed the purchase but believed that the Constitution did not provide the national government with the authority to

make land acquisitions. He pondered whether a CONSTITUTIONAL AMENDMENT might be needed to legalize the purchase. After consultations Jefferson concluded that the president's authority to make treaties could be used to justify the agreement. Therefore, the Louisiana Purchase was designated a treaty and submitted to the Senate for ratification. The Senate ratified the treaty October 20, 1803, and the United States took possession of the territory December 20, 1803.

The U.S. government borrowed money from English and Dutch banks to pay for the acquisition. Interest payments for the 15-year loans brought the total price to more than $27 million. The vast expanse of land, running from the Mississippi River to the Rocky Mountains and from the Gulf of Mexico to the Canadian border, is the largest ever added to the United States at one time. The settling of the territory played a large part in the debate over SLAVERY preceding the CIVIL WAR, as Congress grappled with the question of whether to allow slavery in new states, such as Missouri and Kansas.

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CROSS REFERENCES

Kansas-Nebraska Act; Missouri Compromise of 1820.

LOW-TIDE ELEVATION

Offshore land features such as shoals, rocks, or reefs that are exposed at low tide but submerged at high tide are referred to as low-tide elevations.

If a low-tide elevation lies at least partially within the normal breadth of the TERRITORIAL WATERS of a nation, the low-water line of that elevation may be used as a baseline for measuring the ultimate reach of the territorial sea of that nation. Those low-tide elevations lying totally outside the usual breadth of the territorial sea do not expand the reach of the territorial sea of a nation.

LOYALTY OATH

An oath that declares an individual's allegiance to the government and its institutions and disclaims support of ideologies or associations that oppose or threaten the government.

Loyalty oaths are required of government officials, such as the president, members of Congress and state legislatures, and members of the judiciary. Naturalized citizens are required to pledge their allegiance to the United States, as are members of the ARMED SERVICES. Employees in sensitive government positions may also be required to take a loyalty oath. (See U.S.C.A. § 1448; U.S. Const. art. II, § 1, cl. 7; U.S. Const. art. VI, cl. 3.)

Requiring an employee to promise to support the government as a condition of employment is constitutional as long as the requirement is reasonably related to the employee's fitness for the particular position. Loyalty oaths that infringe on a person's ability to exercise a constitutional right must be narrowly focused to achieve a legitimate government objective. If an oath is overly broad or vague, it may be found unconstitutional.

Loyalty oaths have played a role in American history since the settlement of the colonies. The Puritans in New England required citizens to pledge their support of the commonwealth and to report any individuals who advocated dissent against the government. To ensure unity the CONTINENTAL CONGRESS and the legislatures of the first states all enacted laws requiring citizens to pledge their allegiance to the U.S. government.

Loyalty oaths are often invoked during times of stress, such as wars, or when the government perceives an outside threat to security. For example, after the CIVIL WAR, some states enacted statutes that excluded from certain professions those who had been disloyal to the United States and had sympathized with the CONFEDERACY. One STATUTE that required an oath of prior loyalty for admission to the bar was found unconstitutional because it imposed a legislative punishment for past acts. (See *Ex parte Garland,* 4 Wall. 333, 71 U.S. 333, 18 L. Ed. 366 [1866]; *Cummings v. Missouri,* 4 Wall. 277, 71 U.S. 277, 18 L. Ed. 356 [1866].)

The period after WORLD WAR II was the high-water mark in the history of loyalty oaths. Fear of Communist subversion affected many aspects of life in the United States. There was particular

concern that Communist sympathizers were obtaining employment in the government and in public schools. Thus the majority of states enacted statutes that required public employees, public school teachers, and university professors to sign a loyalty oath as a condition of employment. Under some of the statutes, schools were permitted to discharge teachers who were thought to be disloyal to the government. Most of the statutes required employees to pledge their support of the state and federal constitutions. Some also required teachers to promise to promote patriotism, pledge not to teach or advocate the forcible overthrow of the government, and swear that they did not belong to the Communist party or any other organization that advocated the overthrow of the government.

Enlistees in the U.S. Navy take a loyalty oath during a re-enlistment ceremony aboard the USS John C. Stennis in 2002. Armed services members are required to pledge their allegiance to the United States.

AP IMAGES

Most loyalty oaths required of public employees have been struck down by the Supreme Court, usually on the ground that they violate due process because they are vague and susceptible to wide interpretation. In *Baggett v. Bullitt*, 377 U.S. 360, 84 S. Ct. 1316, 12 L. Ed. 2d 377 (1964), the Court invalidated Washington's statute requiring teachers and state employees to take a loyalty oath. This oath stated that the employee promised to support the federal and state constitutions and promote respect for the flag and reverence for law and order. The Court held that the oath was unduly vague, uncertain, and broad. The Court found further that it violated due process and infringed on the teachers' FREEDOM OF SPEECH. (See also *Cramp v. Orange County, Florida*, 368 U.S. 278, 82 S. Ct. 275, 7 L. Ed. 2d 285 [1961].)

The Court expressed a particular interest in protecting ACADEMIC FREEDOM from infringements imposed by loyalty oaths, in *Keyishian v. Board of Regents,* 385 U.S. 589, 87 S. Ct. 675, 17 L. Ed. 2d 629 (1967). In declaring a New York loyalty statute unconstitutionally vague, the Court in *Keyishian* called academic freedom a "special concern of the First Amendment." It also expressed its belief that loyalty statutes that attempt to prescribe what a teacher can say threaten to "cast a pall of orthodoxy over the classroom."

Some loyalty oath statutes have been invalidated on the ground that they unconstitutionally infringe on freedom of association. In *Wieman v. Updegraff*, 344 U.S. 183, 73 S. Ct. 215, 97 L. Ed. 216 (1952), the Court held that Oklahoma's loyalty oath offended due process because it indiscriminately penalized innocent association or membership in Communist or other subversive groups. That oath required public employees to deny any past affiliation with such organizations. Similarly, in *Elfbrandt v. Russell,* 384 U.S. 11, 86 S. Ct. 1238, 16 L. Ed. 2d 321 (1966), the Court invalidated Arizona's public employee loyalty oath on the ground that it infringed on the employees' freedom of association. To satisfy the Constitution, such statutes may penalize only those who join a subversive organization with knowledge of the group's illegal objectives and SPECIFIC INTENT to further them. The Arizona statute denied public employment to anyone associated with a subversive organization, whether or not the person knew of the group's objectives or subscribed to them.

In some cases the Court has upheld loyalty oaths for government employees if the oaths meet certain requirements. The oaths may not infringe on freedom of speech or association and may not be unduly vague. According to the Court, requiring a public employee to promise to uphold and defend the Constitution and oppose the illegal overthrow of the government does not unduly burden freedom of speech or association. (See *Cole v. Richardson*, 405 U.S. 676, 92 S. Ct. 1332, 31 L. Ed. 2d 593 [1972].)

In 1994 a loyalty oath as a prerequisite for public employment was challenged on the ground that it violated religious freedom. In *Bessard v. California Community College,* 867 F. Supp. 1454 (E.D. Cal. 1994), the plaintiffs, who were Jehovah's Witnesses, stated that

proclaiming loyalty to the government is prohibited by their RELIGION. They argued that under the Religious Freedom Restoration Act of 1993 (RFRA) (42 U.S.C.A. § 2000bb et seq.), the state could not require them to take the loyalty oath as a condition of employment unless it could prove that it had a compelling interest that could not be served except by requiring the oath. The court held that the RFRA applied to the case, that the loyalty oath unconstitutionally infringed on the plaintiffs' religious freedom, and that the DEFENDANT must make reasonable accommodations for the plaintiffs. The court further noted that the defendant could ensure the plaintiffs' loyalty by having them sign a statement that they would not act contrary to the defendant's interests. In *City of Boerne v. Flores*, 117 S. Ct. 2157 (1997), the Supreme Court struck down RFRA as exceeding Congress's authority to safeguard rights under the FOURTEENTH AMENDMENT. The Court held that RFRA was an unconstitutional ENCROACHMENT on state power.

Government attempts to condition the receipt of certain benefits on a declaration of loyalty have generally been found unconstitutional. In *Speiser v. Randall*, 357 U.S. 513, 78 S. Ct. 1352, 2 L. Ed. 2d 1460 (1958), the Court held that requiring veterans to take a loyalty oath as a precondition to receiving a veterans' property tax exemption impinged on their free speech rights. Justice William J. Brennan Jr., writing for the majority, reasoned, "To deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech." Brennan's opinion went on to state that the requirement would have a chilling effect on the claimant's exercise of free speech.

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Chilling Effect Doctrine; Cold War; Communism; Compelling State Interest; Due Process of Law; Void for Vagueness Doctrine.

L.S.

An abbreviation for locus sigilli, *Latin for "the place of the seal," signifying the place within a written contract where a seal is affixed in order to bind the agreement.*

Because the use of seals is decreasing, the use of this abbreviation has declined.

LUMP-SUM SETTLEMENT

The payment of an entire debt all at once rather than in installments; the payment of a set amount of money to satisfy a pecuniary obligation that might otherwise continue indefinitely.

Lump-sum alimony, for example, is the payment of a large sum of money upon the dissolution of a MARRIAGE in order to circumvent the obligation to pay a certain amount, fixed or fluctuating, on a regular basis, for an indefinite period of time. This type of PROPERTY SETTLEMENT is also known as *alimony in gross.*

v LURTON, HORACE HARMON

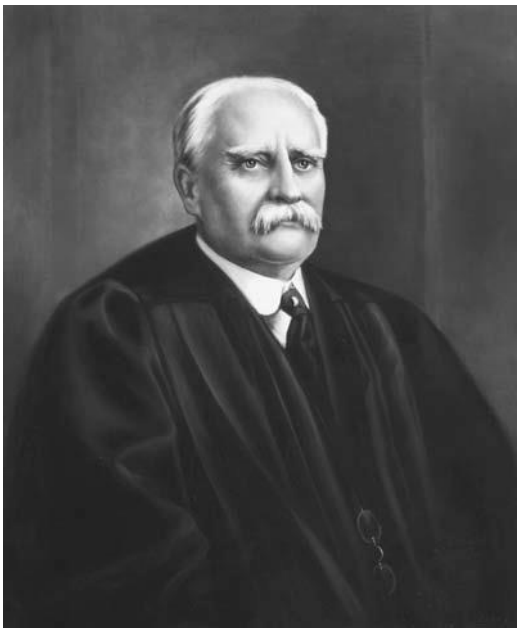
Horace Harmon Lurton epitomized late-nineteenth-century judicial conservatism. Whether he was on the state or federal BENCH, restraint characterized Lurton's opinions. After a successful period in private practice in the 1860s and 1870s, Lurton won election to the Tennessee Supreme Court in 1886. He was its chief justice in 1893; a federal judge on the U.S. Court of Appeals for the Sixth Circuit, in Cincinnati, from 1893 to 1909; and a professor and eventually law school dean at Vanderbilt University starting in 1898. In 1910, at age sixty-six, he became the oldest justice ever appointed to the U.S. Supreme Court.

Lurton was born in Newport, Kentucky, on February 26, 1844. The son of an itinerant physician-turned-preacher, he spent a humble childhood in Tennessee. The defining moment in his life came while he was a 16-year-old undergraduate studying at Douglas University, in Chicago. When the CIVIL WAR broke out, Lurton immediately left school to join the Confederate army. After refusing discharge for a lung condition, he was captured; escaped; and then, while helping conduct guerrilla raids on

Union forces, imprisoned again. He was thought to be near death in the last months of the war when his mother successfully appealed to President ABRAHAM LINCOLN to release him for health reasons.

The experience of war gave Lurton new priorities. Rather than returning to finish his degree in Chicago, he chose to pursue law at Cumberland University Law School, in Lebanon, Tennessee. After graduating in 1867, he distinguished himself in private practice as a diligent, detail-oriented attorney. In 1875 he was appointed to fill a vacated judgeship in the Sixth Chancery Division of Tennessee, where he served for three years before financial pressures made him return to practicing law. The judgeship cemented his reputation, and his practice flourished over the next decade. In 1886 he ran for a seat on the Tennessee Supreme Court. Lurton won. For the next seven years, he was regarded as an eminently fair, patient, and courteous judge. Not the least of his admirers were his colleagues on the Tennessee high court: by a unanimous vote, they made him the court's chief justice in 1893. While on the court he also taught law at Vanderbilt University.

No sooner had Lurton been made chief justice of the Tennessee Supreme Court than President GROVER CLEVELAND tapped him for the federal bench. Lurton resigned from the Tennessee Supreme Court and took his seat on the U.S. Court of Appeals for the Sixth Circuit, in Cincinnati. On the appellate court, Lurton continued to pursue the conservative legal philosophy that had guided his earlier career. He placed extreme importance on the SEPARATION OF POWERS, preferring to have legislatures make laws and abhorring modification of the law by the courts.

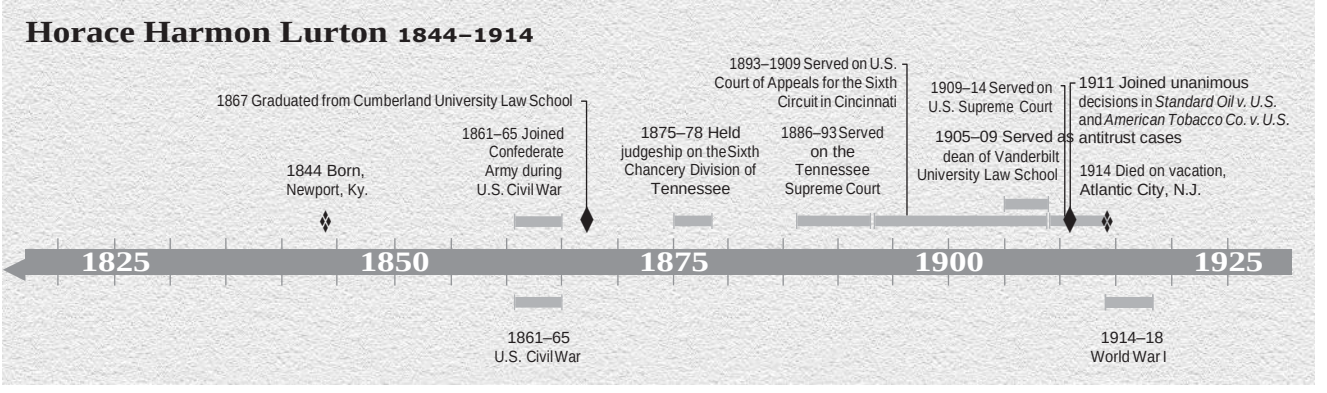


Horace H. Lurton. PHOTOGRAPH BY VIC BOSWELL/GREGORY STAPKO. COLLECTION OF THE SUPREME COURT OF THE UNITED STATES.

In 1905 Lurton served as dean of the Vanderbilt University law school. He was nearly appointed to the U.S. Supreme Court in 1906 by the reform-minded President THEODORE ROOSEVELT. The Republican president's selection was a measure of the respect that the Democratic judge had garnered. Roosevelt only backed off from appointing Lurton when he was persuaded to choose a Republican instead.

In December 13, 1909, President WILLIAM HOWARD TAFT had no qualms about appointing a Democrat, or about appointing the oldest candidate in Supreme Court history. Some opposition was raised over Lurton's age; more complaints were directed at the narrowness of his outlook. Nevertheless, the Senate approved the nomination and Lurton received his commission only one week later. There proved to be

THE DUTY OF THE COURT IS LIMITED TO THE DECISION OF ACTUAL PENDING CONTROVERSIES.
—HORACE LURTON



An African American victim of a 1928 lynching. Between 1880 and 1930, an estimated 2,400 black men, women, and children were killed by lynch mobs.

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no reason for worry: As an ASSOCIATE JUSTICE, Lurton largely followed the lead of the majority. Commentators are generally at a loss to find much of note in Lurton's tenure on the Court, which lasted four years until his death. It was the Progressive Era, and the Court was often concerned with the issue of government regulatory power, particularly in antitrust, the area of law devoted to enforcing fair competition in business. Although he had always resisted so-called judge-made law, Lurton joined in the Court's unanimous decisions in groundbreaking antitrust cases such as *Standard Oil v. United States,* 221 U.S. 1, 31 S. Ct. 502, 55 L. Ed. 619 (1911), and *American Tobacco Co. v. United States,* 221 U.S. 106, 31 S. Ct. 632, 55 L. Ed. 663 (1911). Lurton died July 12, 1914, in Atlantic City, New Jersey.

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LYNCHING

Violent punishment or execution, without due process, for real or alleged crimes.

The concept of taking the law into one's own hands to punish a criminal almost certainly predates recorded history. Lynching (or "lynch law") is usually associated in the United States with punishment directed toward blacks, who made up a highly disproportionate number of its victims. (While the origins of the term "lynch" are somewhat unclear, many sources cite William Lynch, an eighteenth-century plantation owner in Virginia who helped to mete out vigilante justice.)

Lynching acquired its association with violence against blacks early in the nineteenth century. It was used as a punishment against slaves who tried to escape from their owners. Sometimes, whites who openly opposed SLAVERY were the victims of lynch mobs as well. Perhaps not surprisingly, lynching did not become a pervasive practice in the South until after the CIVIL WAR. The passage of the FOURTEENTH AMENDMENT to the Constitution granted blacks full rights of citizenship, including the right to DUE PROCESS OF LAW. Southern whites had been humiliated by their loss to the North, and many resented the thought that their former slaves were now on an equal footing with them (relatively speaking). Groups such as the KU KLUX KLAN and the Knights of the White Camelia attracted white Southerners who had been left destitute by the war. These groups promoted violence (sometimes indirectly) as a means of regaining white supremacy.

Part of the APPEAL of groups such as the Ku Klux Klan was their white supremacy focus. But these groups also played on the fears of Southern whites—that blacks would be able to compete with them for jobs, that blacks could run for political office, and even that blacks could rebel against whites. Lynchings were carried out because of these fears. Whites believed that lynchings would terrorize blacks into remaining subservient while allowing whites to regain their sense of status.

Lynchings became even more widespread beginning in the 1880s and would remain common in the South until the 1930s. Between 1880 and 1930, an estimated 2,400 black men, women, and children were killed by lynch mobs. (During the same time period, roughly 300 whites were lynched.) Most lynchings occurred in the Deep South (i.e., Mississippi,

Georgia, Louisiana, Alabama, and South Carolina). Border Southern states—Florida, Tennessee, Arkansas, Kentucky, and North Carolina also had a noteworthy number of lynchings.

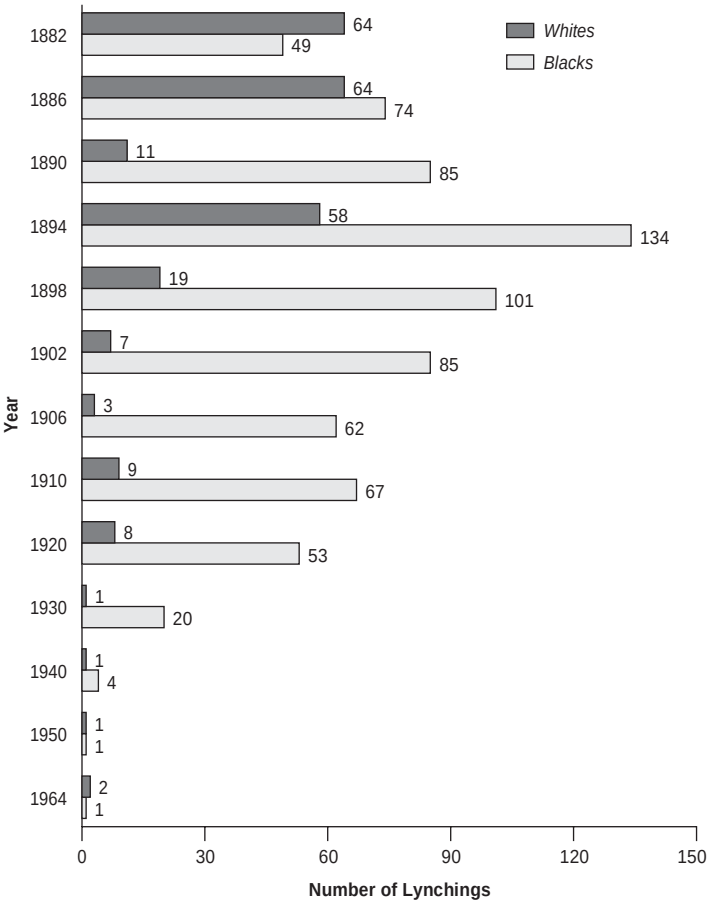
A partial list of "crimes" that prompted lynch mobs during these years underscores a chilling disregard for life: gambling, quarreling, arguing with a white man, attempting to vote, unruly remarks, demanding respect, and "acting suspiciously." Lynchings were often carried out against those suspected of more serious crimes, but they were carried out without allowing a fair trial. It is no exaggeration to state that any black man, woman, or child in the South during these years was in danger of being lynched for any real or imagined improper behavior.

Often, the victim of a lynching would be dragged from his or her home; not infrequently, a lynch mob would drag a victim from a jail cell where supposedly he or she was to be awaiting a fair trial. The typical lynch mob would be made up of local citizens; a core group would actually carry out the crime, while many of the town's residents would look on. The spectators often included "respectable" men and women, and children were often brought to lynchings. A lynching victim might be shot, stabbed, beaten, or hanged; if he was not hanged to death, his body would often be hung up for display. Local police, and even members of the armed forces, either could not or would not intervene to stop a lynch mob from taking the law into its own hands. Not infrequently, a lynching would conclude with a loud, rowdy demonstration among the assembled crowd. The clear message in each lynching was that the mob was in control.

One of the most common crimes answered by lynch mobs was rape—particularly the RAPE of a white woman by a black man. Often, all that a black man had to do to be accused of rape was to speak to a white woman or ask her out. Lynchers justified their actions by saying that they needed to protect women from dangerous men. In response, a group of prominent women from seven Southern states met in 1930 to form the Association of Southern Women for the Prevention of Lynching. This group deplored not only the act of lynching itself, but also the fact that lynchings were frequently witnessed by women and children. They were angered by claims that lynching was a means of protecting white women. During the 1930s they worked to eliminate lynchings throughout the South.

Efforts by politicians to end lynchings were weak at best. Efforts to move anti-lynching legislation through Congress in the early 1900s and again in the 1930s proved futile, in part because Southern representatives and senators carried significant political weight. The first politician to take a visible stand against lynching was President HARRY S. TRUMAN, in 1946. Shocked by a lynching in Monroe, Georgia, in which four people—one a WORLD WAR II veteran—were pulled off of a bus and shot dozens of times by a mob, Truman launched a campaign to guarantee CIVIL RIGHTS for blacks, including a push for federal anti-lynching laws.

Lynchings by Race, 1882 to 1964



SOURCE: University of Missouri-Kansas City School of Law, Professor Douglas Linder's Famous Trials Homepage, Sheriff Shipp Trial, Lynching Statistics.

Truman was able to realize part of what he wanted, but the powerful Southern lobby managed to maintain much of the STATUS QUO. Although large-scale lynchings were no longer staged, blacks in the South still faced vigilante retribution. The MURDER of Emmett Till, in 1955, put enormous pressure on the South to condemn such barbarism. Till, a 14-year-old from Chicago, was visiting relatives in rural Mississippi, where he made suggestive remarks to a white woman. The woman's husband and brother-in-law tracked Till down, shot him, and threw his body in a river. Although (perhaps because) they were acquitted of the murder, the case added momentum to the growing CIVIL RIGHTS MOVEMENT. People across the nation were genuinely shocked at the trial's outcome, and new civil rights legislation was introduced in Congress. By the time the Civil Rights Act of 1965 was signed into law, there were still racial tensions—and elements of racial discord continue into the twenty-first century—but the era of the free-for-all lynch party in which entire communities participated had effectively come to a close.

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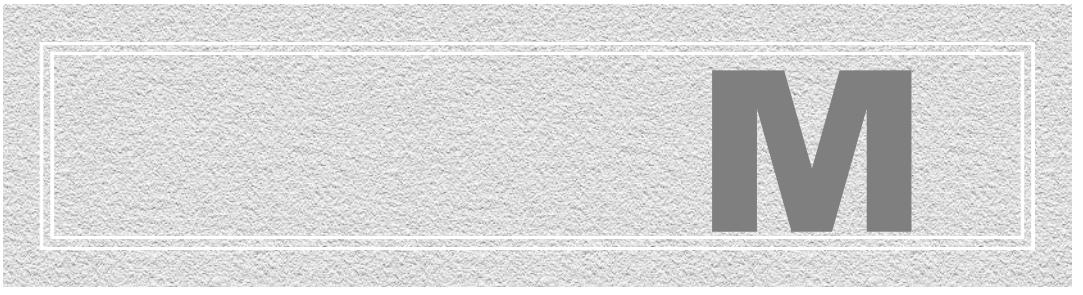
CROSS REFERENCES

Civil Rights Movement; Slavery; Vigilantism.



v MacKINNON, CATHARINE ALICE

Catharine A. MacKinnon is a law professor, author, and a leading scholar and legal theorist known for her ideas on SEXUAL HARASSMENT, PORNOGRAPHY, and equality. She is one of the most widely cited English-speaking legal scholars. In 1982 her controversial proposal for giving CIVIL RIGHTS to victims of pornography was enacted by the city council of Indianapolis, but the ordinance was ultimately overturned by a federal appeals court. The Supreme Court of Canada, however, largely adopted her analysis of equality, hate propaganda, and pornography, in LITIGATION with the Women's LEGAL EDUCATION and Action Fund.

MacKinnon was born in 1946 in Minnesota. Her father, George E. MacKinnon, was a prominent REPUBLICAN PARTY leader who served one term in Congress and later became a federal appeals court judge. MacKinnon graduated from Smith College in 1969. She received her law degree in 1977 from Yale Law School and a Ph.D. in political science from Yale in 1987.

MacKinnon was admitted to the Connecticut bar in 1978, and the following year she published her first book, *Sexual Harassment of Working Women: A Case of Sex Discrimination.* She served as co-counsel for Mechelle Vinson in the groundbreaking U.S. Supreme Court case concerning sexual harassment in the workplace: *Meritor Savings Bank, FSB v. Vinson,* 477 U.S. 57, 106 S. Ct. 2399, 91 L. Ed. 2d 49 (1986). The Court agreed with MacKinnon that sexual harassment, and specifically a "hostile work environment," was actionable under the 1964 CIVIL RIGHTS ACT (42 U.S.C.A. § 2000e et seq.) as SEX DISCRIMINATION. The Court established sexual harassment as sex discrimination for the first time in history, rejecting a narrow reading of the law that would have restricted sexual-harassment claims to discrimination of an economic character. Under this restrictive reading, an employer would not be held liable for harassment unless the employee's salary and promotions were affected by the actions.

Between 1979 and 1989, MacKinnon was a visiting professor at a number of prominent law schools, including her alma mater, Yale. Although she was a prolific writer and a popular teacher, her views and her actions concerning pornography made her a controversial public figure. Her radical feminist theories challenged the legitimacy of the legal system and mainstream liberal thought. She argued that men, as a class, have socially dominated women, creating gender inequality. According to MacKinnon, this inequality is the consequence of a systematic subordination rather than a simple product of irrational discrimination. Thus, heterosexuality is a social arrangement in which men are dominant and women are subordinate. For radical feminists, gender is a question of power.

In MacKinnon's view, pornography is a powerful tool of the dominant male class, subordinating women and exposing them to RAPE and other sexually abusive behavior. In

PORNOGRAPHY SETS THE PUBLIC STANDARD FOR THE TREATMENT OF WOMEN IN PRIVATE AND THE LIMITS OF TOLERANCE FOR WHAT CAN BE PERMITTED IN PUBLIC.
—CATHARINE MACKINNON

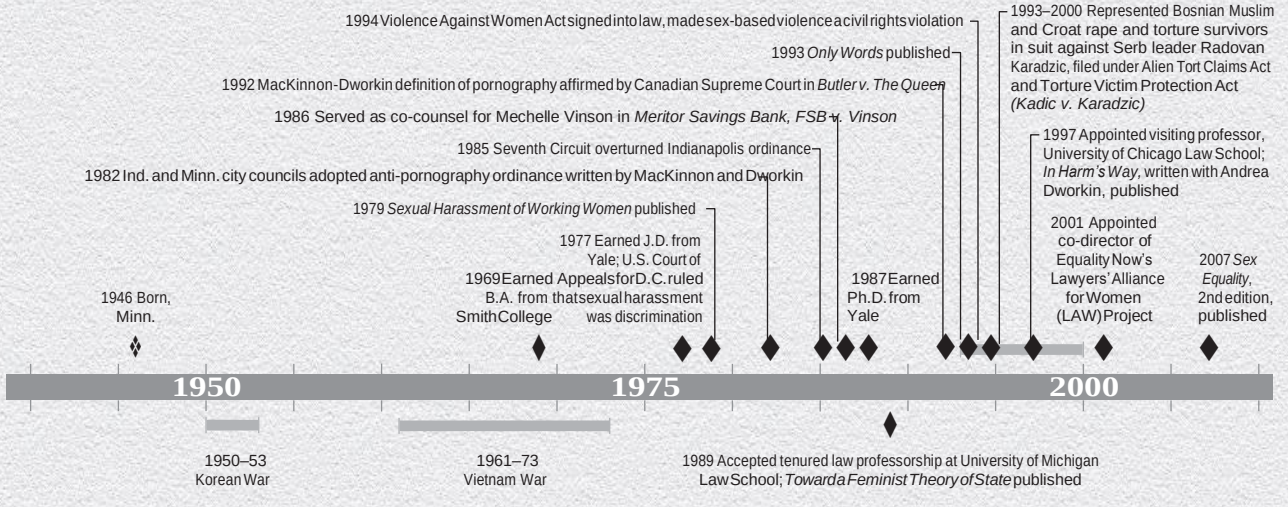
Catharine A. Mackinnon.
TIME & LIFE PICTURES/ GETTY IMAGES

1982, she and feminist author ANDREA DWORKIN convinced the Minneapolis and Indianapolis city councils to enact a pornography ordinance that recognized the civil rights violations of pornography. The ordinance described pornography as "a discriminatory practice based on sex which denies women equal opportunity in society," and defined it as "the graphic sexually explicit subordination of women, whether in pictures or words," that presents women (or any person) in violent or degrading contexts. The ordinance offered a civil CAUSE OF ACTION to persons who could prove physical harm caused by coercion into pornography, ASSAULT due to pornography, the forcing of pornography against a person, or trafficking in pornography. Supporters of the ordinance argued that the harms inflicted by pornography outweighed the rights permitted by free speech, and that the ordinance did not violate the FIRST AMENDMENT.

The U.S. Court of Appeals for the Seventh Circuit, in *American Booksellers Ass'n, Inc. v. Hudnut,* 771 F.2d 323 (1985), overturned the ordinance. The court agreed that pornography affected the way in which people view and react to the world and their social relations, but it observed that the same could be said of other protected speech, including expressions of racial bigotry. Despite the demise of the ordinance, MacKinnon has remained steadfast in her view, sometimes debating persons who defend the publication of pornography on First Amendment grounds.

In 1989 MacKinnon became a tenured law professor at the University of Michigan Law School. She was named as the Elizabeth A. Long Chair in Law in 1998. Since 1997 she has served as visiting professor of law at the University of Chicago and has also served as a visiting professor at Columbia University and the University of Basel in Switzerland. She continues to write and to lecture about FEMINIST JURISPRUDENCE. MacKinnon's 1993 book, *Only Words,* restated

Catharine A. MacKinnon 1946–



her attack on pornography, rape, and the sexual subordination of women. In 1998 she published another book entitled *In Harm's Way: The Pornography Civil Rights Hearings*, and in 2001 she published a casebook entitled *Sex Equality*, which was updated in 2007.

In August 2000, along with co-counsel, MacKinnon successfully secured a $745 million verdict in a New York court for Croatian and Muslim Bosnian women and children who were sexual victims in Serbia. *Kadic v. Karadzic,* 866 F.Supp. 734 (S.D.N.Y. 1994), 70 F. 3d 232 (2d Cir. 1996), cert. denied 518 U.S. 1005 (1996). The case, originally filed under the Alien Tort Claims Act and Torture Victim Protection Act, established rape as a legal claim for GENOCIDE under INTERNATIONAL LAW and has been influential in domestic and international courts.

As of September 2009 MacKinnon continues to teach at the University of Michigan and is actively involved with Equality Now, an international nonprofit WOMEN'S RIGHTS organization that fights such injustices as rape and sex trafficking.

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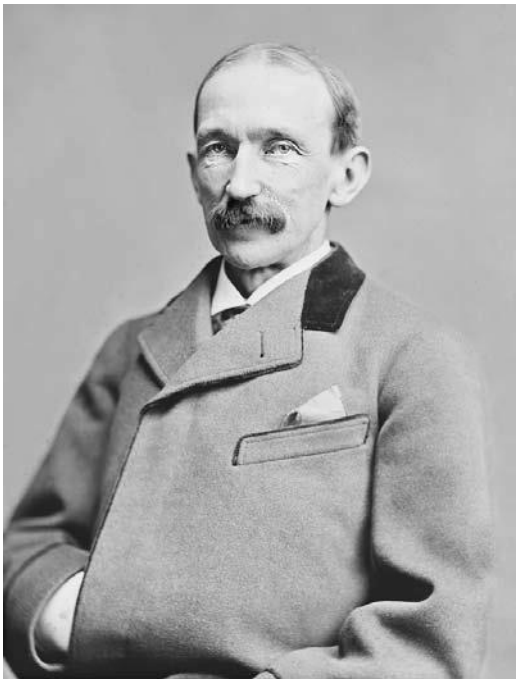
MACPHERSON V. BUICK MOTOR CO.

A famous 1916 New York Court of Appeals decision, *MacPherson v. Buick Motor Co.,* 217 N.Y. 382, 111 N.E. 1050, expanded the classification of "inherently dangerous" products and thereby effectively eliminated the requirement of privity—a contractual relationship between the parties in cases that involve defective products that cause personal injury.

The Buick Motor Company manufactured automobiles that it sold to retailers who, in turn, sold them to consumers. The plaintiff, Donald MacPherson, bought a car from a dealer and was subsequently injured when the car collapsed during a drive. The accident was due to a defective wheel, which the defendant, Buick, did not make but purchased from another manufacturer. Evidence indicated that the defect could have been discovered by reasonable inspection, but none took place. The plaintiff sued the defendant for his personal injuries, but the defendant claimed that it was not liable for the wheel manufacturer's NEGLIGENCE. The state trial and intermediate appellate courts found for the plaintiff, and the defendant appealed to the Court of Appeals, the highest court of New York. The court narrowed the issue to whether the defendant owed a duty to anyone but the retailer to whom it sold the car.

In a majority opinion written by BENJAMIN CARDOZO, the court affirmed the judgment for the plaintiff. Because the defendant was a manufacturer of automobiles that, if defective, are inherently dangerous by virtue of their existence, it had a responsibility for the finished product, which included testing its various parts before placing it on the market for sale. The manufacturer could not avoid liability based upon the fact that it purchased the wheels from a reputable manufacturer, because it had a duty to inspect the car, which it failed to do. The defendant argued that because poisons, explosives, or comparable items that are normally used as "implements of destruction" were not involved, there was no "imminent danger" to the plaintiff's life. There was therefore, no basis for the imposition of liability upon a manufacturer to a third person, who was not a party to the contract between the manufacturer and seller of the dangerous product. The court rejected this argument, reasoning that if a product when negligently made poses a danger of personal injury, then the product is "a thing of danger," because injury is a foreseeable consequence of its use. Because the car had room for three persons and the retailer who bought the car from the manufacturer planned to resell it, ultimately to the plaintiff, it could be expected that injury could occur to persons who did not purchase the car directly from the manufacturer. The failure of the defendant—the manufacturer of the finished product for sale to the public—to inspect the car, and in light of the other factors mentioned, rendered the company liable to the plaintiff who was not in privity with it.

The rule of *MacPherson v. Buick Motor Co.* that eliminated the need for privity between a manufacturer and an individual suffering personal injury from a defectively made product



Isaac W. MacVeagh.
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became the majority rule in the United States and one of the fundamental principles of the law of PRODUCT LIABILITY.

v MACVEAGH, ISAAC WAYNE

Isaac Wayne MacVeagh served as U.S. attorney general from March to October 1881. His appointment was short because of the assassination of President JAMES GARFIELD early in the president's term of office. MacVeagh resigned soon after Garfield's death so that President CHESTER A. ARTHUR could select his own attorney general.

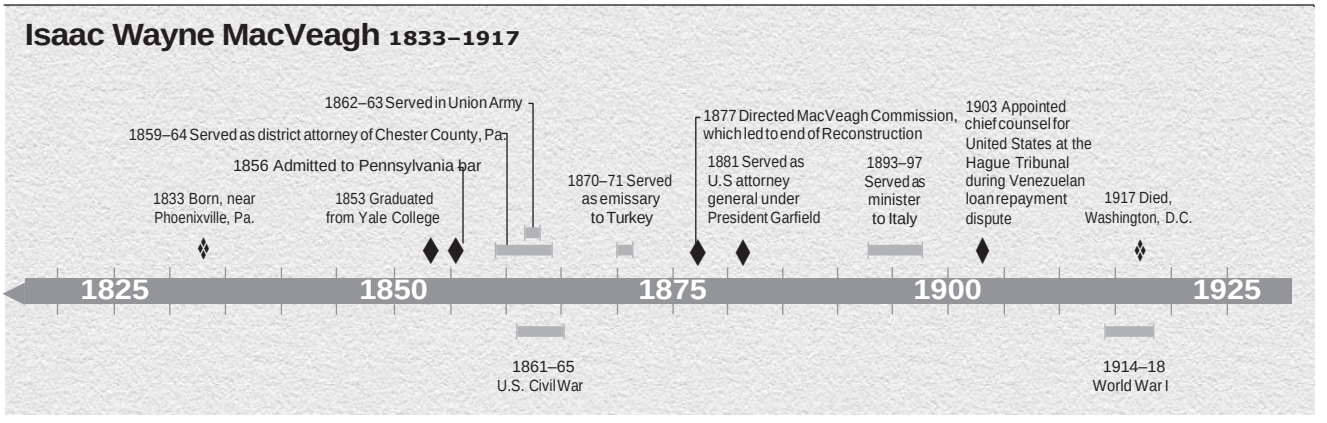
MacVeagh was born on April 19, 1833, in Phoenixville, Pennsylvania. He attended school in Pottstown, Pennsylvania, before entering Yale College, where he graduated in 1853. He studied law in West Chester, Pennsylvania, and was admitted to the bar in 1856. In 1859 he became district attorney of Chester County, Pennsylvania.

During the Civil War, MacVeagh served as an infantry captain and as a major in the cavalry. He was forced to resign from the military because of ill health. He resumed his position as district attorney, but he also became active in REPUBLICAN PARTY politics. He was appointed U.S. minister to Turkey in 1870. The following year he returned to Pennsylvania and waged a failed campaign to win a U.S. Senate seat.

In 1877 President RUTHERFORD B. HAYES selected MacVeagh to direct an organization, subsequently known as the MacVeagh Commission, to arbitrate political differences in Louisiana. The actions of the commission hastened the removal of federal troops from the area and ended the last vestiges of Reconstruction in the South.

President James Garfield appointed him attorney general on March 5, 1881, but MacVeagh had little time to perform his duties. Garfield was shot on July 2, 1881, after only four months in office, at the railroad station in Washington, D.C., by Charles J. Guiteau, a disappointed office seeker. For 80 days the president lay ill and performed only one official act—the signing of an EXTRADITION paper. On September 19, 1881, Garfield died. MacVeagh submitted his resignation on October 24, 1881.

In 1882 MacVeagh decided to join the DEMOCRATIC PARTY. In 1893 President GROVER CLEVELAND, a Democrat, appointed MacVeagh minister to Italy, a post he held until 1897.



Toward the end of his career, MacVeagh served as chief counsel for the United States at the HAGUE TRIBUNAL during a dispute involving Venezuela's repayment of loans to several countries.

MacVeigh died on January 11, 1917, in Washington, D.C.

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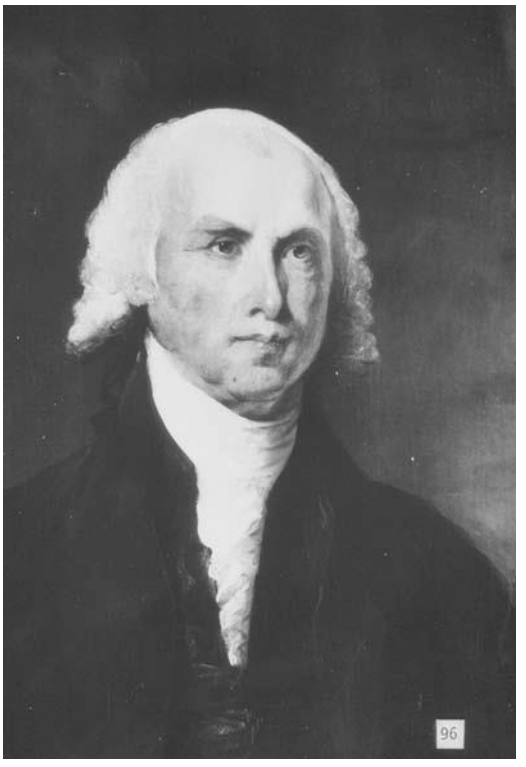
v MADISON, JAMES

James Madison was the fourth president of the United States, serving from 1809 to 1817. Before achieving the nation's highest office, he participated in the Virginia Constitutional Convention; was a delegate to the CONTINENTAL CONGRESS; drafted a proposal for the U.S. Constitution; supported ratification of the Constitution, through *The Federalist Papers,* written with ALEXANDER HAMILTON and JOHN JAY; served in the House of Representatives; helped write the BILL OF RIGHTS; and was Thomas Jefferson's SECRETARY OF STATE.

Born March 16, 1751, in Port Conway, Virginia, Madison was the first of 11 children in his family. His father, James Madison Sr., was the wealthiest landowner in Orange County, Virginia, and provided Madison with a stable and comfortable upbringing. Eleanor Conway Madison, his mother, was an affectionate woman who gave the family emotional support throughout her 98 years of life.

Madison grew up on an isolated plantation in Montpelier, Virginia. As a teenager he attended school in King and Queen County, studying logic, philosophy, mathematics, astronomy, and French, among other subjects. Although Madison suffered from ill health during much of his youth, he developed a reputation as an intense and ambitious student at the College of New Jersey (now Princeton University), which he attended from 1769 to 1772.



James Madison. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION.

By 1774 it was becoming clear to many observers that the differences between the colonists and the British government could not be resolved peacefully. During that year Parliament passed the Coercive Acts, which closed the Boston Port, restricted town assemblies, and authorized British authorities to house their troops in private colonial residences. In September 1774 the First Continental Congress convened to discuss the emerging crisis with Great Britain. Unlike many colonists, who were reluctant to take any radical measures before Parliament could respond to the petition of grievances drafted by Congress, Madison favored immediate military preparations.

As Madison became more politically vocal, he became more politically active. In December 1774 he was elected to the Orange County Committee of Safety, one of many colonial bodies formed to carry out congressional mandates such as the American boycott of English goods. In October 1775, six months after the Revolution began in Lexington and Concord, Madison was commissioned a colonel in the county militia. In 1776, at age 25, he was elected as a delegate to the Virginia Provincial Convention, where he helped draft Virginia's constitution.

In May 1776 the Virginia Provincial Convention, later known as the New House of Delegates, instructed its representatives at the Second Continental Congress to draft a declaration of independence, negotiate foreign alliances, and complete the U.S. ARTICLES OF CONFEDERATION. The Articles of Confederation empowered Congress to govern certain areas of national concern, including foreign policy. The several states retained power to govern most other issues within their own borders.

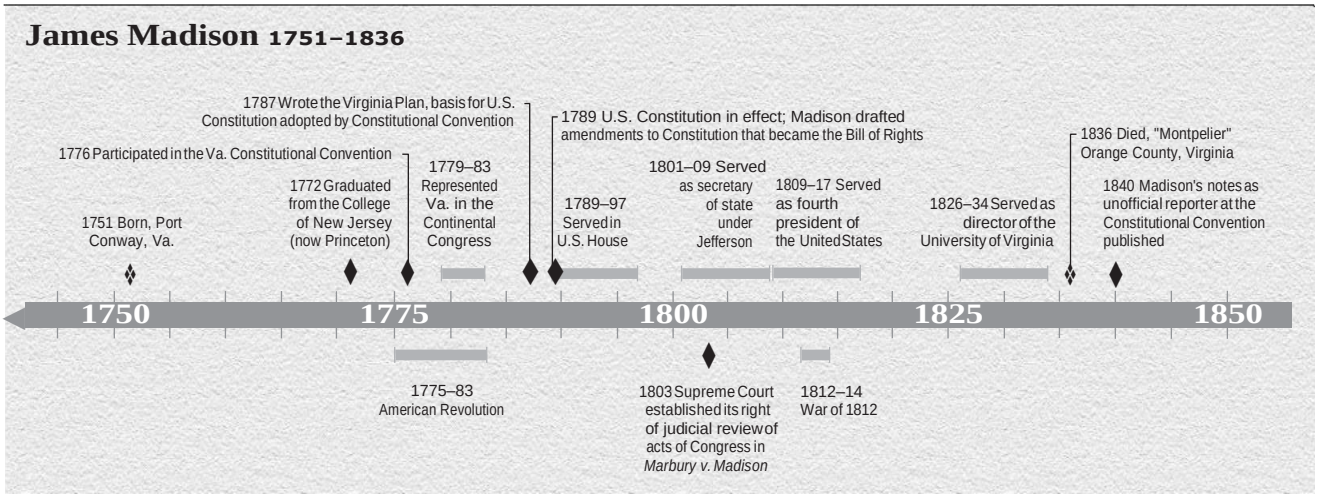
In the New House of Delegates, Madison forged a friendship with Jefferson that would leave an indelible imprint on U.S. law and U.S. history. Jefferson and Madison shared a love for books, ideas, and solitude. Jefferson had authored the Declaration of Independence, and Madison would be considered the architect of the U.S. Constitution. But whereas Jefferson was idealistic and impetuous, Madison was more realistic and rational. Although Madison was eight years younger than Jefferson, his thoughtful temperament often helped palliate the mercurial Jefferson. From 1777 to 1779, Madison served as a cabinet member for Jefferson, who was the governor of Virginia.

In December 1779 Virginia chose Madison as one of its five delegates to the Continental Congress. Earning respect for his sober and methodical approach to lawmaking as well as his intellectual prowess, Madison helped Congress pass a revenue measure that rescued the fledgling nation from BANKRUPTCY. Over the next three years, Madison learned how to shape an agenda and to achieve results through compromise.

On April 15, 1783, Congress ratified a peace treaty with Great Britain that concluded the Revolutionary War, and won U.S. independence. This year also marked the end of Madison's tenure with the Continental Congress. After returning home to Virginia, Madison was elected by the voters of Orange County to the state legislature in 1784.

During the 1784 fall session, the Virginia assembly approved an act to incorporate the Episcopal Church, and postponed action on another bill that sought to subsidize Christianity by levying a tax on behalf of teachers who taught this religion. In response to this proposed bill, Madison anonymously published a short leaflet entitled *Memorial and Remonstrance against Religious Assessments.* This leaflet called for a separation of church and state, denounced government aid to religion, declared the equality of all religions, and articulated a general liberty to worship according to the dictates of one's conscience without fear of persecution. Many copies of the leaflet were distributed to the state assembly in October 1785, along with supporting signatures, which helped influence enough legislators to defeat the Christian subsidy.

The following year Madison joined Hamilton in urging Congress to summon a national convention at Philadelphia to draft a federal constitution that would replace the Articles of Confederation. Under the Articles of Confederation, Congress had no power to regulate commerce. As a result the 13 states engaged in a series of trade wars with each other. Many



states imposed discriminatory taxes and regulations on goods imported from other states, and some states refused to import any goods from neighboring states.

Also under the Articles of Confederation, Congress had no power to tax. When Congress requested money to pay for the public debt and the Continental Army, the states often failed to respond. Consequently, the national debt grew and the Continental Army suffered a rash of desertions. Congressional ability to obtain credit dwindled. Madison observed that the 13 states would be in a precarious and vulnerable position if the country were required to defend its borders against foreign invasion.

Congress was the country's only federal government body; the Articles of Confederation did not provide for an EXECUTIVE BRANCH to enforce congressional will, or a judicial branch to resolve disputes. This single body was virtually powerless to do anything about outbreaks of rebellion that were becoming more frequent in the states. For example, it offered no reasonable resolution for SHAYS'S REBELLION of 1786, an insurrection of nearly two thousand farmers who were protesting Massachusetts's land foreclosure laws.

Fifty-five delegates representing 12 states attended the Constitutional Convention during the summer of 1787. Reaching Philadelphia on May 14, Madison was the first delegate to arrive from any state other than Pennsylvania. Business would not begin until May 25, when a quorum of seven states would first be present. Madison seized the intervening 11 days to draft a 15-point proposal that formed the underpinnings of the U.S. Constitution.

Known as the Virginia Plan, this proposal presented a radical departure from the Articles of Confederation. In it, with help from the other Virginia delegates, Madison suggested a constitutional system comprising a strong centralized federal government with three branches: executive, legislative, and judicial. The sovereignty granted to each branch would be limited by the sovereignty granted to the other two branches and by the concurrent sovereignty retained by the states. This system of checks and balances had no predecessor in history.

The Virginia Plan provided the blueprint for a bicameral (two-chamber) legislature, with an upper chamber known as the Senate and a lower chamber known as the House of Representatives. As originally conceived, the plan gave Congress the indefinite power to legislate in all "cases to which the states are not competent." State governments would retain authority to legislate local concerns, and to create constitutional systems of their own. However, Madison made clear that the federal government would be supreme, and that any state law in contravention of the U.S. Constitution, a congressional enactment, or a federal treaty would be void.

At the same time, Madison's proposal for a broad grant of undefined congressional power was jettisoned. Madison argued that Congress should be given more legislative authority than state legislatures because state laws had been largely responsible for the recent trade wars and farmer rebellions. However, Madison was unable to explain why the federal government, made up of representatives from the several states, should be trusted to exercise its lawmaking powers any more prudently than had the state governments. Thus, the delegates persuaded Madison that the powers of the executive and legislative branches must be limited to those expressly enumerated in the Constitution. However, one of those enumerated powers, Congress's power to make all laws "necessary and proper" in the performance of its legislative function, has provided a broad constitutional basis for federal lawmaking similar to that originally envisioned by Madison.

The NECESSARY AND PROPER CLAUSE was only one of the constitutional provisions vigorously defended in *The Federalist Papers,* a series of essays written by Madison, Hamilton, and Jay that explained and promoted the system of government created by the Philadelphia convention. Called *The Federalist Papers* because proponents of the federal Constitution were known as Federalists, this collection of essays was circulated among the delegates to the state ratifying conventions, in an effort to win their support. Opponents of the federal Constitution, known as Anti-Federalists, published and circulated essays and leaflets of their own.

Some Anti-Federalists eventually lent their support to the ratification movement when Madison and other Federalists promised to draft a bill of rights that would protect individual liberty and state sovereignty from encroachment by the federal government. In 1788 the

BUT WHAT IS GOVERNMENT ITSELF, BUT THE GREATEST OF ALL REFLECTIONS ON HUMAN NATURE? IF MEN WERE ANGELS, NO GOVERNMENT WOULD BE NECESSARY. IF ANGELS WERE TO GOVERN MEN, NEITHER EXTERNAL OR INTERNAL CONTROLS ON GOVERNMENT WOULD BE NECESSARY.
—JAMES MADISON

Constitution was adopted by the states. The next year Madison was elected to the House of Representatives, where he subsequently represented Virginia for eight years. During the First Congress, in 1789, Madison drafted 12 amendments to the U.S. Constitution, ten of which were ultimately adopted by the states, with some subtle changes in language, and now stand as the Bill of Rights.

Neither the Constitution nor the Bill of Rights expressly mentions the power of JUDICIAL REVIEW, which is the prerogative of state and federal courts to invalidate laws that violate a constitutional provision or principle. Article VI declares that the federal Constitution "shall be the supreme Law of the Land." Yet it does not state whether the executive, legislative, and judicial branches possess the power to nullify laws that are unconstitutional. Although the Framers of the Constitution recognized that courts had traditionally exercised the authority to interpret and apply the law, the power of judicial review had never been a clearly established practice in Anglo-American LEGAL HISTORY.

In the landmark case *MARBURY V. MADISON,* 5 U.S. (1 Cranch) 137, 2 L. Ed. 60 (1803), the U.S. Supreme Court established the power of judicial review in the United States. While serving as secretary of state to President Jefferson (1801–1809), Madison was sued by William Marbury, a judge who had been appointed to the federal bench during the waning hours of President John Adams's administration. Marbury argued that Madison had violated his duties as secretary of state by failing to deliver to Marbury a commission that he needed to complete his appointment to the federal judiciary.

Although the Supreme Court agreed that Madison had wrongfully withheld the commission, it denied Marbury's claim because it had been brought pursuant to an unconstitutional provision of a federal statute. By invalidating that provision, the Supreme Court established the power of judicial review. When Madison learned of the Supreme Court's decision, he criticized the judicial branch for attempting to usurp congressional lawmaking power.

Madison said that to allow unelected federal judges to overturn legislation enacted by the popularly elected branches of government makes "the judicial department paramount in fact to the legislature, which was never intended, and can never be proper." Madison changed his mind on this issue near the end of his life. As an elder statesman attending the Virginia Constitutional Convention in 1829, and as a director for the University of Virginia from 1826 to 1834, he assailed the nullification theories of southern legislators who proclaimed the prerogative to ignore federal laws in certain circumstances. Only the judiciary, Madison concluded, had the power to declare federal laws unconstitutional.

Serving as the fourth president of the United States (1809–17), Madison revealed the same propensity to reevaluate strongly held beliefs in light of experience. Earlier in his career, he had opposed the creation of a congressionally chartered national bank. He had initially believed that under no faithful interpretation of the Constitution was Congress authorized to establish a national bank. Yet, in 1816 Madison signed a bill that established the Second Bank of the United States, agreeing that it represented a constitutional exercise of congressional power. Popular acceptance of the First Bank of the United States had altered Madison's perception.

The WAR OF 1812 provided some of the best and worst moments of Madison's presidency. During the low point of the war with Great Britain, English troops occupied Washington, D.C., and burned down the White House. Despite other such humiliating moments for the U.S. military, Madison's troops rebounded in 1815 and soundly defeated the British in the final battle of the war at New Orleans. Although Americans gained nothing tangible from the war, they had successfully defended their soil.

The perseverance and resolve demonstrated by Madison and his troops during the war proved to be an important step in the maturation process of the young republic. By winning the War of 1812 and defeating British troops for a second time in less than half a century, JOHN ADAMS remarked, Madison brought more glory to the United States than any of his three predecessors in office. Madison also unified the country like never before in its short history, allowing his successors to build upon the emerging national identity.

After the close of his second term, Madison retired from public office and returned home to Montpelier, Virginia, where he devoted long hours to farming and became president of the local agricultural society. Madison welcomed

retirement, seeing it as an opportunity to renew his passion for reading and resume his correspondence with THOMAS JEFFERSON. He died on June 28, 1836.

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CROSS REFERENCES

Bank of the United States; Constitution of the United States; Federalism; *Federalist Papers*; Virginia Conventions.

MAGISTRATE

Any individual who has the power of a public civil officer or inferior judicial officer, such as a JUSTICE OF THE PEACE.

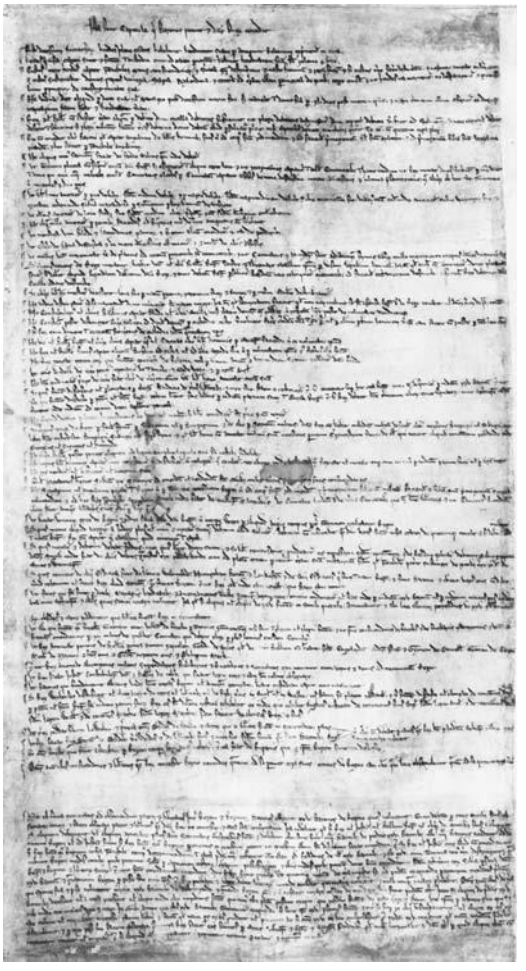
The various state judicial systems provide for judicial officers who are often called magistrates, justices of the peace, or police justices. The authority of these officials is restricted by statute, and jurisdiction is commonly limited to the county in which the official presides. The position may be elected or appointed, depending on the governing state statute. The exact role of the official varies by state; it may include handling hearings regarding violations of motor vehicle codes or breaches of the peace, presiding over criminal preliminary hearings, officiating marriages, and dispensing civil actions involving small sums of money.

U.S. magistrates are judicial officers appointed by the judges of federal district courts pursuant to the United States Magistrates Act (28 U.S.C.A. §§ 631 et seq.), enacted in 1968. This act was designed to reduce the workload of federal courts by replacing the old system of U.S. commissioners with a new system of U.S. magistrates. U.S. magistrates can perform more judicial functions than could U.S. commissioners. Federal magistrates may be assigned some, but not all, of the duties of a federal judge. They may serve as special masters (persons appointed by the court to carry out a particular judicial function on behalf of the court), supervise pretrial or discovery proceedings, and provide preliminary consideration of petitions for postconviction relief. U.S. magistrates generally may not decide motions to dismiss or motions for SUMMARY JUDGMENT, because these motions involve ultimate decision making, a responsibility and duty of the federal courts. However, if all the parties to a case agree, a federal magistrate may decide such motions and may even conduct a civil or misdemeanor criminal trial. Federal magistrates are not permitted to preside over felony trials or over jury selection in felony cases.

MAGNA CARTA

On June 15, 1215, King John (1199–1216) was surrounded on the battlefield at Runnymede by a cordon of England's most powerful barons, who demanded royal recognition for certain liberties and legal procedures they enumerated in a written document that became known as the Magna Carta. Contained in the Magna Carta's 63 chapters are the seeds of trial by jury, due process, HABEAS CORPUS, and equality under the law. The Magna Carta was reissued three times during the reign of Henry III (1216–72) with some minor alteration, and confirmed by the Crown more than 30 times thereafter.

Sometimes called the Great Charter or Magna Charta, the Magna Carta is widely considered to be the foundation of the English and U.S. constitutional systems, representing the first time the often tyrannical power of the monarchy was restrained by law and popular resistance. The Magna Carta was cited by SIR EDWARD COKE, esteemed English jurist and member of the House of Commons, in



Part of the Magna Charta, signed by England's King John in 1215. The document became a model for written contracts between governed and governed, such as the U.S. Constitution.

BRITISH MUSEUM COLLECTION

opposition to the monarchy's assertion of absolute power in the seventeenth century. During the American Revolution, colonists relied on the Magna Carta when they convened the First CONTINENTAL CONGRESS to restore the rights lost under the coercive legislation of Parliament.

Almost from its inception, the Great Charter has been imbued with two separate meanings, one literal and the other symbolic. The literal meaning is reflected by the original understanding of the Magna Carta in the thirteenth century; the symbolic meaning was developed by subsequent generations, which interpreted its provisions in light of a changing political landscape. The literal meaning was associated with the concrete rights enforced by the barons against the monarchy; the symbolic meaning became associated with the RULE OF LAW, an impartial system of justice, and government by the consent of the people and their representatives. To understand the symbolic importance attached to the Magna Carta, one must view the literal meaning in its original context.

The Magna Carta is the product of three competing legal jurisdictions: royal, ecclesiastical, and baronial. The royal system of justice maintained jurisdiction over all matters that affected the monarch's peace, directly or indirectly. Royal courts heard disputes at a central location in Westminster, and royal itinerant judges traveled locally to dispense the monarch's justice to communities across England.

The Catholic church, with the pope presiding as the spiritual head in Rome, ran the ecclesiastical courts. These courts maintained jurisdiction over the discipline of the church's clergy, religious offenses such as heresy, and most moral, marital, and testamentary matters.

Baronial courts were governed by barons, powerful men who were given titles of dignity by the Crown and who held large parcels of land, known as manors, from the monarch. Each baron, as lord of his manor, was invested with the authority to hear disputes involving his tenants, men and women who agreed to work the land in exchange for shelter and security.

John alienated both the ecclesiastical and baronial jurisdictions during his reign as king, converting them into adversaries. The first ten years of John's reign were consumed by controversy with the church. John considered the pope to be subordinate to the Crown and treated the archbishop as a mere civil servant. The church, however, considered itself to be a separate and independent sovereign that had shared power with the Crown since the time of Henry I (1100–1135). Henry I and the church had agreed that the nomination of bishops in England would tacitly remain with the king. But the pope retained power to confirm bishops by conferring upon them the honorary symbols of their title, the spiritual staff and ring.

The agreement between Henry I and the church provided no resolution for the controversy between King John and Pope Innocent III at the outset of the thirteenth century. The controversy began when Innocent III rejected John's candidate for archbishop of Canterbury and substituted his own choice, Stephen Langton, a man of superior "moral and intellectual greatness" (Trevelyan 1982, 146). John responded by confiscating the church's property in England. The papacy, whose power had

grown as a result of its compromise with Henry I, subsequently undertook a series of steps to damage the Crown's prestige and credibility.

The pope excommunicated King John, suspended religious sacraments in England, and declared the English empire a forfeit from God. Facing growing pressure from the church and increasing unpopularity among Catholics within his own country, John surrendered England to the papacy, receiving it back as a fief, which meant the Crown was now subordinate to Rome and was required to pay homage to the pope. These royal concessions satisfied the pope and made him a cautious ally of the Crown. Archbishop Langton was determined to achieve similar concessions for the barons.

The grievances voiced by the barons were quite different from those voiced by the church. The barons' dissatisfaction stemmed from the manner in which the royal system of justice had been abused by King John. Prior to the reign of HENRY II (1154–89), ENGLISH LAW had comprised a loose collection of customs and traditions followed by a variety of ethnic groups scattered across the realm. Henry II created a centralized system of justice that emanated from London, which the monarch's officials administered in a uniform manner to all English people in common. Although this "common law" established a body of rights and procedures by which all litigants appearing before the ruler's courts would theoretically be treated the same, it also vested an enormous amount of power in the Crown. The tension separating ARBITRARY royal power from the principle of equality under the law erupted during the struggle between King John and his baronial magnates.

King John regularly sold legal rights and privileges to the highest bidder, rewarded favorites, punished enemies, and otherwise administered justice in an erratic and unfair fashion. For a dispute to be heard by the royal courts, parties were required to pay the monarch fees, which varied from case to case depending on the circumstances. If the Crown was in need of emergency revenue—and it seemingly always was during the reign of King John—these litigation fees were increased commensurate with the urgency of a particular financial crisis. Litigants in good graces with the monarch typically paid lower court fees than litigants in disfavor. A defendant who requested the postponement or suspension of a legal matter was required to pay a greater fee than the plaintiff was charged.

Such litigation fees, which were paid in all legal matters—civil, criminal, matrimonial, and probate—simply enabled parties to assert their claims and defenses before the royal court. They did not guarantee a particular outcome, although the amount paid may have influenced the outcome, and they bore no relationship to the penalty or fine imposed on the losing party. Consequently, defendants who paid an exorbitant fee just to present an unsuccessful defense often faced fines of an equally outrageous amount. Defendants who suffered incarceration for a wrongdoing were usually forced to purchase their freedom from the monarch.

The manner in which the ruler enforced and collected royal debts was no less capricious. Litigants who could not afford to pay the legal fees set by the Crown frequently borrowed money from the ruler in order to pursue a particular right or remedy. The terms of such loan agreements were typically draconian. As collateral for these loans, John required the debtors to pledge their estates, PERSONAL PROPERTY, and sometimes family members. In one case, a debtor was forced to pledge his castle and four sons as collateral. On other occasions, friends and family members of the debtor were held hostage by the king until the loan was repaid in full.

In some instances, the king simply forgave a loan because the debtor was a personal friend, had promised political favors, or had provided an invaluable service. In most instances, the invaluable service was military duty. During the thirteenth century, each baron was required to serve as a soldier in the monarch's army, and provide the Crown with a certain number of knights for military service. A fine could be paid in lieu of the baron's military service, and a tax, known as scutage, was then paid in lieu of the knights' service. When King John launched a military campaign, he dramatically increased the fines and taxes for nonservice, and used these monies to pay mercenaries to fight his battles.

Although King John dreamed of building an English empire through military conquest on the European continent, he was an utter failure on the battlefield. With each military loss, the miscellaneous economic demands made by the Crown seemed less justified and more absurd.

It is not surprising, then, that the barons renounced loyalty to the king, plotted his assassination, and ultimately compelled his capitulation to the Magna Carta.

The grievances King John promised to redress in the Magna Carta represent both the substance of the Great Charter's original meaning and its later symbolic import. The document's immediate purpose was to appease the baronial leadership. In this vein, it provided that justice would not be sold, denied, or delayed (ch. 40), and ensured that certain rights and procedures would be "granted freely" without risk of "life or limb" (ch. 36). It guaranteed the safe return of hostages, lands, castles, and family members that had been held as security by the Crown for military service and loan agreements. The Magna Carta mandated the investigation and ABOLITION of any "ill customs" established by King John (ch. 48), and required that no "justices, constables, sheriffs, or bailiffs" be appointed unless they "know the law of the land, and are willing to keep it" (ch. 45).

The phrase "law of the land" is interspersed throughout the Magna Carta, and is emblematic of other abstract legal concepts contained in the Great Charter that outlasted the exigencies of 1215. Nowhere in the Great Charter is "law of the land" defined, but a number of sections offer an early glimpse of certain constitutional liberties in embryonic form.

For example, the American colonies equated "law of the land" with "due process of law," a legal principle that has been the cornerstone of procedural fairness in U.S. civil and criminal trials since the late 1700s. The DUE PROCESS CLAUSE of the Fifth and Fourteenth Amendments has been relied on by the U.S. Supreme Court as a source for substantive rights as well, including the right to privacy.

Chapter 39 of the Magna Carta linked the law-of-the-land principle with another important protection. It provided, "No free man shall be seized, or imprisoned, or disseised, or outlawed, or exiled or injured in any way, nor will we enter on him or send against him except by the lawful judgment of his peers, or by the law of the land." In 1215, a person obtained "lawful judgment of his peers" through a communal inquest in which 12 knights or landowners familiar with the subject matter of the dispute took an oath, and swore to testify truthfully based on their own knowledge or on knowledge gained from an EYEWITNESS or other credible source.

This primitive form of fact-finding replaced even cruder methods—such as trial by battle, where the disputants fought savagely until one party begged for mercy or died, and the victorious party was presumed to have God and Right on his side. The process of one's peers in the community rendering judgment also presaged the modern trial by jury recognized by the SEVENTH AMENDMENT to the U.S. Constitution, which similarly entitles a defendant to be tried by a body of jurors that is a "truly representative" cross section of the community (*Glasser v. United States,* 315 U.S. 60, 62 S. Ct. 457, 86 L. Ed. 680 [1942]).

The U.S. Supreme Court has also traced the origins of modern habeas corpus law to chapter 39 of the Magna Carta (*Murray v. Carrier,* 477 U.S. 478, 106 S. Ct. 2639, 91 L. Ed. 2d 397 [1986]). Habeas corpus is a procedure that authorizes a court to determine the legality under which a person is jailed, imprisoned, or otherwise detained by the government. If the court finds that the person was deprived of liberty through "due process of law," continued detention is permissible until trial, where guilt and innocence are placed in issue. Similarly, the Magna Carta validated the continued imprisonment of persons who had been originally incarcerated by the "law of the land."

In *Harmelin v. Michigan,* 501 U.S. 957, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991), the Supreme Court also pointed to the Magna Carta as an early source of its EIGHTH AMENDMENT proportionality analysis. Chapter 20 of the Great Charter prohibited the monarch from imposing a fine "unless according to the measure of the offense." It further provided that "for a great offense [a free man] shall be [punished] according to the greatness of the offense." Under the Eighth Amendment to the Constitution, the Supreme Court has echoed this principle by prohibiting state and federal governments from imposing fines and other forms of punishment that are disproportionate to the seriousness of the offense for which the defendant was convicted.

The contemporary significance of the Magna Carta is not confined to the areas of civil and CRIMINAL PROCEDURE. The Great Charter prohibited the government from assessing any military tax such as scutage "except by the common counsel of [the] realm" (ch. 12). The common

counsel comprised persons from various classes of English society, including bishops, abbots, earls, and barons. The common counsel was a forerunner to Parliament and Congress as a representative body limiting the power of the government to pass legislation, particularly tax legislation, without popular consent.

The common counsel also proclaimed what would become a battle cry of the American colonists: No Taxation without Representation. Indeed, some colonists decried the STAMP ACT, a statute passed by Parliament that taxed everything from newspapers to playing cards, as an illegal attempt to raise revenue in violation of the Magna Carta. Other colonists cited "the assembly of barons at Runnymede, when Magna Carta was signed" as precedent for the Continental Congress (Bailyn 1992, 173 n. 13).

The achievement of the Magna Carta, then, is found not only in the original meaning understood by Englanders of the thirteenth century, but also in the subsequent application of the document's principles. The Magna Carta began as a peace treaty between the baronial class and the king, but later symbolized a written contract between the governed and the government, a contract that included the right of rebellion when the government grew despotic or ruled without popular consent.

The Magna Carta also came to represent the notion of government bound by the law, sometimes referred to as the rule of law. The distinction between government according to law and government according to the will of the sovereign has been drawn by legal and political philosophers for thousands of years. This distinction was also made during the reign of King John. For example, Peter Fitz Herbert, an important landowner, complained that his father had been "disseised" of land "by the will of the king" despite evidence that the land belonged to his family as a matter of "right."

In another case, jurors returned a verdict against the Crown because the king had acted "by his will and without judgment" (Holt 1965, 91). For subsequent generations, in both England and the United States, the Magna Carta signified the contrast between tyrannical government unfettered by anything but the personal whims of its political leadership, and representative government limited by the letter and spirit of the law. The Magna Carta implied that no government official, not even an autocratic monarch asserting absolute power, is above the law.

Finally, the Magna Carta has come to symbolize equality under the law. Although the baronial leadership of 1215 represented a privileged class of male landowners, many provisions of the Magna Carta safeguarded the interests of women as well. For example, the Magna Carta granted women the right to refuse marriage and the option to remarry. It also protected a widow's DOWER interest in one-third of her husband's property.

Some provisions of the Magna Carta applied more broadly to all "free" individuals (ch. 39), whereas other provisions seemingly applied to every person in the realm, free or not. Chapter 16, for example, stated that "no one" shall be compelled to perform service for a knight's fee, and chapter 42 guaranteed a safe return to "anyone" who left the realm.

The most telling provision in this regard was chapter 40, which provided that "justice" will be sold to "no one." This provision embodies more than the idea that justice is cheapened when bought and sold. It also underscores the principle that all persons, rich and poor, must be treated the same under the law. An extension of this principle was captured by the EQUAL PROTECTION CLAUSE of the FOURTEENTH AMENDMENT to the U.S. Constitution, which, as interpreted by the Supreme Court, invalidates laws that discriminate on the basis of, among other things, race, gender, national origin, and ILLEGITIMACY.

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MAGNUSON-MOSS WARRANTY ACT

The Magnuson-Moss Warranty–Federal Trade Commission Improvement Act was the first federal statute to address the law of WARRANTY. The act (15 U.S.C.A. § 2301 et seq.) mandates that a written warranty on any consumer product that costs more than $5 must completely and conspicuously disclose, in easily understood words, the terms and conditions of the warranty. A warranty may guarantee several things, such as that the item will perform in a certain way or that the manufacturer will repair or replace the item if it is defective.

The act was sponsored by Senators Warren G. Magnuson and Frank E. Moss. Congress passed the act in 1975. Its purpose was to improve the information available to consumers, prevent deception, and improve competition in the marketing of consumer products, which are defined as property distributed in commerce and actually used for personal, family, or household purposes. The act provides a federal CAUSE OF ACTION for consumers who experience problems with warranted durable goods. If a plaintiff prevails against a seller in a lawsuit brought under the act, the plaintiff is entitled to recover all litigation expenses, including attorney's fees based on actual time expended, as determined by the court.

The Act does not require that manufacturers or sellers of consumer products provide written warranties. Instead, the act requires that manufacturers and sellers who do warrant their products to clearly disclose the terms of the warranty so that the consumer understands his or her rights under the warranty.

In addition, according to the act, a written warranty on a consumer product that costs more than $10 must be clearly labeled as "full" or "limited." A full warranty means that whoever promises to fix the item must do so in cases of defect or where the item does not conform to the warranty. This action must be done within a reasonable time and without charge. A limited warranty can contain reasonable restrictions regarding the responsibilities of the manufacturer or seller for the repair or replacement of the item.

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CROSS REFERENCE

Consumer Protection.

MAIL COVER

The process governed by the U.S. Postal Regulations (39 C.F.R. § 233.3) that allows the recording of all the information that appears on the outside cover of mail in any class, and also allows the recording of the contents of second-, third-, and fourth-class mail, international parcel post mail, and mail on which the appropriate postage has not been paid.

Mail covers may be granted by the chief postal inspector, or a delegate of the inspector's, and are allowed upon the request of a law enforcement agency. The law enforcement agency's purpose must be to protect national security, locate a fugitive, obtain evidence of the commission or attempted commission of a crime, or help identify property, proceeds or assets forfeitable under law.

To obtain a mail cover, the law enforcement agency must make a request in writing to the chief postal inspector, and must specify reasonable grounds demonstrating the necessity of the mail cover. The regulations do not define reasonable grounds, but in *Vreeken v. Davis,* 718 F.2d 343 (1983), the Tenth Circuit Court of Appeals held that a statement as to why the mail cover was necessary to an investigation, and that the subjects of the mail cover were under GRAND JURY investigation, was sufficient. In *Vreeken* the court held that a letter stating that the plaintiffs were subjects of a grand jury investigation for tax FRAUD, and that the mail cover was necessary

to identify promoters, finders, and investors involved in the alleged scheme, was enough to meet the requirements of the mail cover regulations. The court stated that the regulations do not include a requirement that the request contain "the factual predicate upon which it concludes that the subject of the mail cover is involved in the commission of a crime."

The constitutionality of mail cover has been challenged primarily as a violation of the FOURTH AMENDMENT right against unreasonable SEARCHES AND SEIZURES. Although the U.S. Supreme Court has not addressed this issue directly, lower courts have held that such a violation does not exist. Mail cover has been compared to the use of a PEN REGISTER, which is a mechanical device that records the numbers dialed on a telephone without monitoring the conversation. The Supreme Court, in *Smith v. Maryland,* 442 U.S. 735, 99 S. Ct. 2577, 61 L. Ed. 2d 220 (1979), held that pen registers do not violate an individual's Fourth Amendment right to privacy. The Court concluded that there is no reasonable expectation of privacy regarding the numbers dialed on a telephone because the user knows that the phone company receives those numbers. The court in *Vreeken* compared mail covers to pen registers in that the contents of mail are not examined, and that a person sending or receiving mail should know that the information first goes to the post office and that the outside of the mail must be examined by employees of the post office before it can be delivered.

Mail covers also have been held not to violate the FIRST AMENDMENT, the NINTH AMENDMENT, or postal regulations.

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MAIL FRAUD

A crime in which the perpetrator develops a scheme using the mails to defraud another of money or property. This crime specifically requires the intent to defraud, and is a federal offense governed by section 1341 of title 18 of the U.S. Code. The mail fraud statute was first enacted in 1872 to prohibit illicit mailings with the Postal Service (formerly the Post Office) for the purpose of executing a fraudulent scheme.

Initially, courts strictly followed the mail FRAUD statute's language and interpreted it narrowly. The early decisions required a connection between the fraudulent scheme and the misuse of the mails for a violation of the mail fraud statute. Since its enactment, application of the statute has evolved to include dishonest and fraudulent activities with only a tangential relationship to the mails.

Punishment for a conviction under the mail fraud statute is a fine or imprisonment for not more than five years, or both. If, however, the violation affects a financial institution, the punishment is more severe: The statute provides that "the person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both."

Both the Supreme Court and Congress have consistently broadened the mail fraud statute since its enactment. Prior to a 1909 amendment, a violation of the mail fraud statute required proof, among other requirements, of either opening or intending to open correspondence or communication with another person. In 1909 Congress eliminated this requirement and replaced it with the language that the mails be used "for the purpose of executing such scheme or artifice or attempting so to do." This amendment followed the Supreme Court's decision in *Durland v. United States,* 161 U.S. 306, 16 S. Ct. 508, 40 L. Ed. 709 (1896), which held that the mailing only needed to "assist" in the completion of the fraud. Although this amendment was the last significant change until 1988, the Supreme Court has struggled with the relationship between the mailing element and the execution of the fraud.

The Court's struggle with this relationship is illustrated by two of its decisions: *United States v. Maze,* 414 U.S. 395, 94 S. Ct. 645, 38 L. Ed. 2d 603 (1974), and *Schmuck v. United States,* 489 U.S. 705, 109 S. Ct. 1443, 103 L. Ed. 2d 734 (1989). In *Maze,* the defendant stole his roommate's credit card and car and signed his roommate's name to the charge VOUCHERS to obtain food and lodging. The merchants mailed the invoices to a bank in Louisville, Kentucky. The Supreme Court held that this did not fall within the scope of the mail

fraud statute because the mailings did not perpetuate the fraud. The Court held that the scheme did not depend on the mailings and that the fraud was completed once the defendant signed the vouchers. The Court refused to interpret the statute as merely a jurisdictional requirement and stated that "Congress could have drafted the mail fraud statute so as to require only that the mails be in fact used as a result of the fraudulent scheme."

However, in *Schmuck,* the Court did expand the mail fraud statute. In *Schmuck,* the defendant sold used cars to auto dealers in which he had rolled back the odometers to inflate the vehicles' value. The dealers sent title application forms to the state department of transportation to register the cars after the dealers sold them to individual purchasers. The Court held that the sale of the vehicles depended on the transfer of title and that, although the mailing of the registration may not have contributed directly to the scheme, it was necessary for the passage of title and perpetuation of the scheme.

Since the mid-1980s Congress has amended the mail fraud statute twice. In 1988 Congress added section 1346, which states that the term "scheme to defraud" includes a scheme to deprive another of the intangible right of honest services. In 1994 Congress expanded the use of the mails to include any parcel that is "sent or delivered by a private or commercial interstate carrier." As a result of these amendments, the mail fraud statute has become a broad act for prosecution of dishonest and fraudulent activities, as long as those crimes involve the mails or an interstate carrier.

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EXCEPT THE BLIND FORCES OF NATURE, NOTHING MOVES ON THIS WORLD WHICH IS NOT GREEK IN ITS ORIGIN.
—HENRY MAINE

v MAINE, HENRY JAMES SUMNER

Sir Henry James Sumner Maine was a leading nineteenth-century English jurist. Maine's writings on the social and historical bases of all legal systems have been recognized for their clarity of thought and style, although modern commentators have criticized Maine for overgeneralization.

Henry Maine.
LIBRARY OF CONGRESS

Maine was born August 15, 1822, in Kelso, Scotland. In 1844 he graduated from Cambridge University, where he tutored until he was appointed to be a professor of CIVIL LAW in 1847. He criticized LEGAL EDUCATION for teaching practical skills rather than the analysis of law as a science. His legal practice was limited, as he concentrated on publishing legal and political writings.

Maine first achieved prominence with the publication of *Ancient Law* in 1860. *Ancient Law* traced the historical development of law in the ancient world. Maine argued in it that there are two types of societies: static and progressive. Static societies include most of the non-Western world. He believed that countries such as India and China were locked in an unchanging world, bound by a fixed legal condition dominated by family dependency. In those societies, laws had very limited application and were binding not on individuals but on families. The rule of conduct for the individual was the law of the home, as distinguished from civil law.

In contrast, Maine proposed, European societies were progressive, characterized by a

desire to improve and to develop. In progressive societies, civil law grew as a greater number of personal and property rights were removed from the domestic forum to the public tribunal. Maine saw the distinguishing feature in this movement as the gradual dissolution of family dependency and its replacement by individual obligation—as a movement from personal conditions to agreement, from status to contract.

Maine believed that the modern legal order would make talent and ability more important than race, sex, or family in shaping personal status. His beliefs in the evolution of Western law, and progress in general, struck a chord in the Anglo-American legal community. His theories were attractive to those in the United States who saw a powerful national economy reshaping society and creating opportunity for those who were willing to take risks and to work hard.

Maine took a hiatus from his professorship in 1863, to serve as a legal member of the Viceroy's Council in India for six years. Upon his return to England in 1869, he resumed his legal scholarship, publishing *Village Communities* in 1871, *The Early History of Institutions* in 1875, and *Early Law and Custom* in 1883.

Maine's conclusions have been challenged over the past century. Historians and social scientists have pointed out that many of his interpretations are false and based on limited information. Despite these perceived shortcomings, Maine is still regarded as a seminal figure in JURISPRUDENCE. His use of historical and anthropological methods was groundbreaking, and his strong conceptual framework helped to reshape the way in which legal developments are analyzed.

Maine died February 3, 1888, in Cannes, France.

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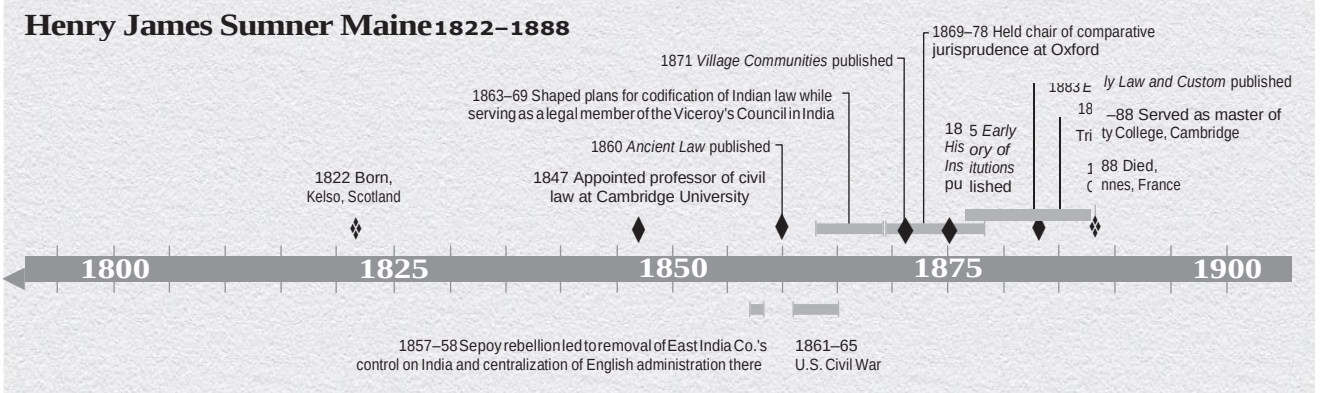
MAINTENANCE

Unauthorized intervention by a nonparty in a lawsuit, in the form of financial or other support and assistance to prosecute or defend the litigation. The preservation of an asset or of a condition of property by upkeep and necessary repairs.

A periodic monetary sum paid by one spouse for the benefit of the other upon separation or the dissolution of marriage; also called ALIMONY *or spousal support.*

At COMMON LAW the offense of CHAMPERTY AND MAINTENANCE arose when a stranger bargained with a party to a legal action, undertaking to pay for the litigation in exchange for a promise of a portion of the recovery. The common-law doctrines of champerty and maintenance were designed to stop vexatious and speculative litigation supported by officious intermeddlers (nonparties with improper motives). These common-law principles have been adopted in varying degrees in the United States, depending on the particular state.

The term *maintenance* is also used to describe the expenses of preserving property, which may be deductible according to the applicable state or federal tax laws. Maintenance expenses are typically recurring, with the goal of preserving the particular asset in its original condition, to prolong its useful life. Maintenance differs from a repair because a repair is



an expenditure designed to return an asset to its normal operating condition.

In FAMILY LAW *maintenance* is often used as a synonym for *spousal support* or *alimony,* and the term is in fact replacing alimony. Traditionally, alimony was solely the right of the wife to be supported by the husband. In *Orr v. Orr,* 440 U.S. 268, 99 S. Ct. 1102, 59 L. Ed. 2d 306 (1979), the U.S. Supreme Court held that an Alabama statute (Ala. Code § 30-2-51 to 30-2-53 [1975]) that provided that only husbands could be required to pay alimony violated the EQUAL PROTECTION CLAUSE of the FOURTEENTH AMENDMENT. Under current law alimony may be payment by either the wife or the husband in support of the other.

The award of spousal maintenance is generally determined based on all or some of the following guidelines: the recipient's financial needs; the payer's ability to pay; the age and health of the parties; the standard of living the recipient became accustomed to during the marriage; the length of the marriage; each party's ability to earn and be self-supporting; and the recipient's nonmonetary contributions to the marriage.

The amount and length of spousal maintenance payments may be agreed to by the parties and approved of by the court, or may be set by the court when the issue is contested. Some states have adopted financial schedules to help judges determine the appropriate level of support. Although maintenance generally takes the form of periodic payments of money directly to the recipient, it can also constitute a payment to a third party to satisfy an obligation of the receiving spouse. Maintenance may be set in a predetermined amount, such as $1,000 a month, or it may be a fluctuating percentage, such as 25 percent of the payer's gross income.

Spousal maintenance may be temporary or permanent. The parties generally may adjust its amount at a future date by returning to court and reassessing the relevant criteria at that time. In some states the parties may forever waive their right to spousal maintenance by written agreement.

Spousal maintenance payments always cease upon the death or remarriage of the recipient. Some states have adopted laws that provide for the termination of maintenance when the payer can show that the recipient is living with another person as if married, but has not remarried because he or she wants to continue to receive maintenance payments. Maintenance also generally terminates upon the death of the payer, although a minority of states will grant the receiving spouse a claim on the estate of the paying spouse. Alternatively, many states require the paying spouse to carry insurance on his or her life, payable to the recipient spouse, in lieu of granting the recipient the right to make a claim on the payer's estate.

Spousal maintenance that is periodic and made in discharge of a legal obligation is included in the gross income of the recipient and is deductible by the payer. Other voluntary payments, made by one spouse to the other, are not treated the same way by the tax code.

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CROSS REFERENCE

Divorce.

v MAITLAND, FREDERIC WILLIAM

Frederic William Maitland pioneered the study of early English LEGAL HISTORY. A talented and prolific scholar, Maitland imaginatively reconstructed the world of Anglo-Saxon law.

Maitland was born May 28, 1850, in London, England. He graduated from Cambridge University and then studied law at Lincoln's Inn. He joined the bar in 1876 and soon proved himself a skilled attorney. Maitland's interests subsequently shifted to the history of ENGLISH LAW. He set as his goal the writing of a scientific and philosophical history of English law that took into account its interaction with the social, economic, and cultural life of the English people. His first book, *Pleas of the Crown for the County of Gloucester*, was published to acclaim in 1884. In that year he left his law practice and became a reader in English law at Cambridge. In 1888 he was named a professor of law at Cambridge.

Between 1885 and 1906 Maitland published many volumes of English history, including *Justice and Police* (1885), *The History of English Law before the Time of Edward I* (with SIR FREDERICK POLLOCK, 1895), and *Domesday Book and Beyond* (1897). He also helped form the

SELDEN SOCIETY, an association devoted to the preservation and analysis of Old English legal history. Maitland contributed many introductions to society publications, which mainly consisted of reprints of primary legal documents. Finally, Maitland was a popular lecturer. His published lectures include *Constitutional History of England* (1908), *Equity* (1909), and *The Forms of Action* (1909).

As a historian, Maitland has been praised for his ability to grasp and articulate the great central themes underlying the development of the COMMON LAW, and his ability to penetrate and render the inner meaning of words. He enjoyed being a historical detective, sifting through masses of often contradictory and confusing sources to find historical truth. Despite his respect for the English common-law tradition, Maitland was not an antiquarian. He actively supported the major law reform efforts of his day.

Maitland's historiography was not based on ideology or theory. History, to Maitland, was not the product of impersonal social or economic forces, but something more complex. Therefore, in the world described in his writings, individual personalities, particular events, cultural traditions, and the peculiarity of language play significant roles. Running through his work is a deep respect for the toughness, resiliency, and vitality of English common law. Common-law lawyers and judges are intellectual and moral heroes in his evocation of medieval England.

Though many of Maitland's claims have been qualified or refuted by later research and scholarship, he is recognized as a seminal figure in the study of English legal history. Maitland died December 19, 1906, at Las Palmas, Canary Islands.

MAJORITY

Full age; legal age; age at which a person is no longer a minor. The age at which, by law, a person is capable of being legally responsible for all of his or her acts (e.g. contractual obligations), and is entitled to the management of his or her own affairs and to the enjoyment of civic rights (e.g. right to vote). The opposite of minority. Also the status of a person who is a major in age.

The greater number. The number greater than half of any total.

The common-law age of majority is 21 although state legislatures may change this age by statute. INFANTS reach the age of majority on the first moment of the day preceding their 21st birthday. Minority is the period of time when a child is an infant.

MAKER

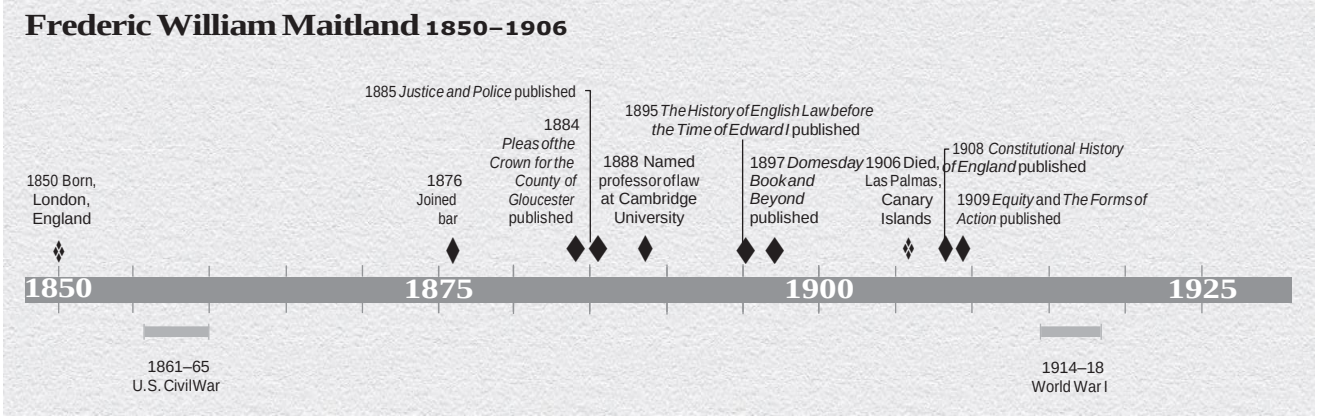
One who makes, frames, executes, or ordains; as a lawmaker, *or the* maker *of a promissory note. One who signs a note to borrow and, as such, assumes the obligation to pay the note when due. The person who creates or executes a note, that is, issues it, and in signing the instrument makes the promise of payment contained therein. One who signs a check; in this context, synonymous with drawer. One who issues a promissory note or certificate of deposit.*

MALA FIDES

[Latin, Bad faith.]

A *mala fide purchaser* is one who buys property from another with the knowledge that it has been stolen. In contrast, a bona fide purchaser is one who does so with no knowledge that the seller lacks good title to the property.

THE HISTORY OF LAW MUST BE A HISTORY OF IDEAS.
—FREDERIC MAITLAND



MALA IN SE

Wrongs in themselves; acts morally wrong; offenses against conscience.

In CRIMINAL LAW, crimes are categorized as either *mala in se* or mala prohibita, a term that describes conduct that is specifically forbidden by laws. Although the distinction between the two classifications is not always clear, crimes *mala in se* are usually common-law crimes or those dangerous to life or limb.

BATTERY and grand larceny or petit larceny are examples of offenses that courts have held to be *mala in se.*

MALA PROHIBITA

[Latin, Wrongs prohibited.] *A term used to describe conduct that is prohibited by laws, although not inherently evil.*

Courts commonly classify statutory crimes as *mala prohibita.* This, however, is not a fixed rule because not all statutory crimes are classified as such.

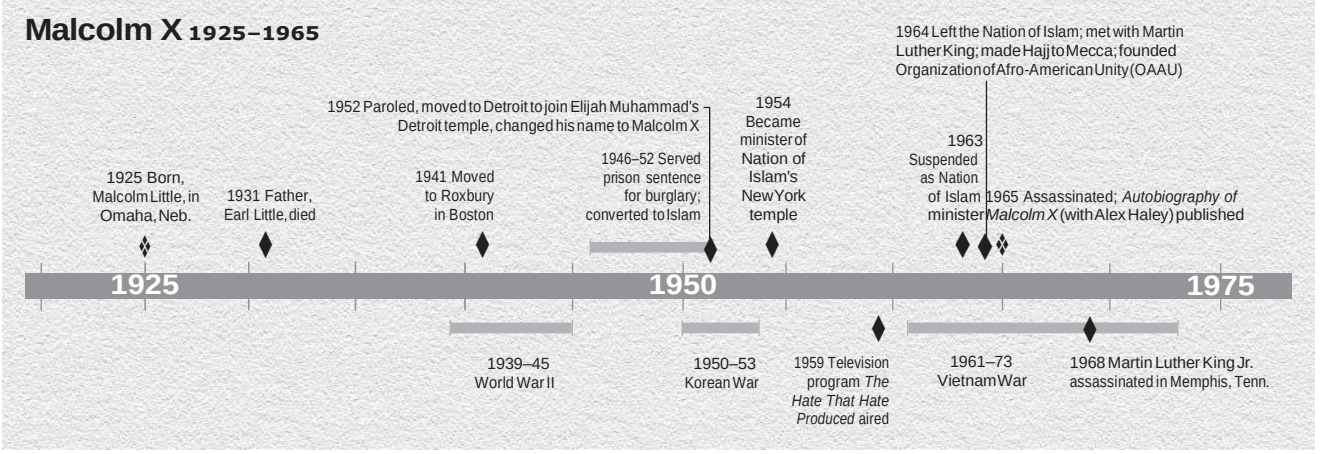
Examples of *mala prohibita* include public intoxication and carrying a concealed weapon.

v MALCOLM X

Malcolm X was a NATION OF ISLAM minister and a black nationalist leader in the United States during the 1950s and 1960s. Since his assassination in 1965, his status as a political figure has grown considerably, and he has become an internationally recognized political and cultural icon. The changes in Malcolm X's personal beliefs can be followed somewhat by the changes in his name, from Malcolm Little when he was a young man to Malcolm X when he was a member of the Nation of Islam to El-Hajj Malik El-Shabazz-Al-Sabann after he returned to the United States from a spiritual pilgrimage to Mecca in 1964. He was a ward of the state, a shoe shine boy in Boston, a street hustler and pimp in New York, and a convicted felon at the age of 20. After embracing Islam in prison and directing his grassroots leadership and speaking skills to recruit members to the Nation of Islam, he ultimately became an influential black nationalist during the CIVIL RIGHTS MOVEMENT of the 1960s.

The fifth child in a family of eight children, Malcolm was born May 19, 1925, in Omaha, Nebraska. His father, Earl Little, was a Baptist minister and a local organizer for the Universal Negro Improvement Association, a black nationalist organization founded by Marcus M. Garvey in the early twentieth century. His mother, Louise Little, was of West Indian heritage. Malcom's father was killed under suspicious circumstances in 1931 and his mother had a breakdown in 1937.

After his father's death and his mother's commitment to a mental hospital, Malcolm was first placed with family friends, but the state WELFARE agency ultimately situated him in a juvenile home in Mason, Michigan, where he did well. Malcolm was an excellent student in junior high school, earning high grades as well as praise from his teachers. Despite his obvious talent, his status as an African American in the 1930s prompted his English teacher to discourage Malcolm from pursuing a professional career. The teacher instead encouraged him to work with his hands, perhaps as a carpenter.



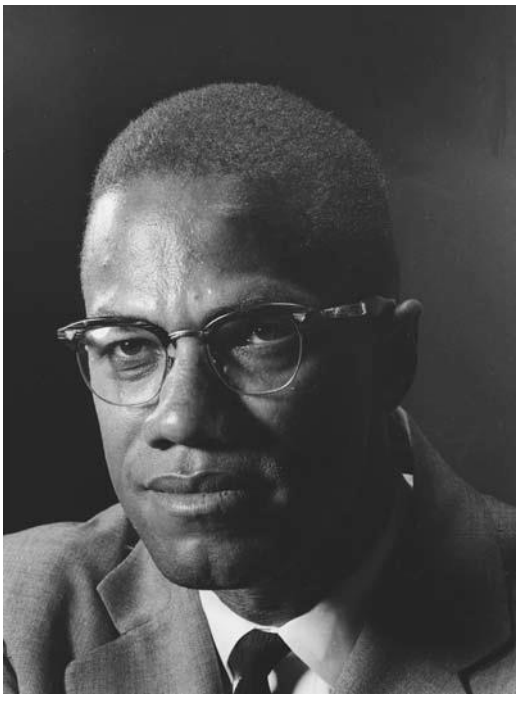
In 1941, shortly after finishing eighth grade, Malcolm moved to Roxbury, a predominantly African American neighborhood in Boston. From 1941 to 1943 he lived in Roxbury with his half-sister ELLA LEE LITTLE-COLLINS. He worked at several jobs, including one as the shoe shine boy at the Roseland State Ballroom. He became what he later described as a Roxbury hipster, wearing outrageous zoot suits and dancing at local ballrooms.

Malcolm moved to Harlem in 1943, at the age of 18. Here he earned the nickname Detroit Red, because of his Michigan background and the reddish hue to his skin and hair. In his early Harlem experience, Malcolm was a hustler, dope dealer, gambler, pimp, and numbers runner for mobsters.

In 1945, when his life was threatened by a Harlem mob figure named West Indian Archie, Malcolm returned to Boston, where he became involved in a BURGLARY ring with an old Roxbury acquaintance. In 1946 he was caught attempting to reclaim a stolen watch he had left for repairs, and the police raided his apartment and arrested him and his accomplices, including two white women. He was charged with LARCENY and breaking and entering, to which he pleaded guilty at trial. On February 27, 1946, he entered Charlestown State Prison to begin an eight- to ten-year sentence; he was 20 years old.

Malcolm was transferred in 1948 to an experimental and progressive prison program in Norfolk, Massachusetts. The Norfolk Prison Colony gave greater freedom to its inmates. It also had an excellent library, and Malcolm began to read voraciously. Prompted by his brother, Reginald Little, Malcolm converted to Islam while in prison and became a follower of Elijah Muhammad, the leader of the Nation of Islam. The Nation of Islam, founded by Wallace D. Fard in the 1930s, advocated racial separatism and enforced a strict moral code for its followers, all of whom were African American.

Malcolm was paroled from prison in 1952. He immediately moved to Detroit, where he worked in a furniture store and attended the Nation of Islam Detroit temple. Malcolm soon abandoned the surname Little in favor of X, which represented the African surname he had never known. With his oratory skill, Malcolm X quickly became a national minister for the Nation of Islam. As a devout follower of Elijah Muhammad, he helped to establish numerous temples across the United States. He became the minister for temples in Boston and Philadelphia, and in 1954 he became minister of the New York temple. In 1958 he married Sister Betty X, who had earlier joined the Nation of Islam as Betty Sanders. Together they had six children, including twins who were born after Malcolm's assassination.



Malcolm X.
AP IMAGES

During his early years with the Nation of Islam, Malcolm's primary role was as spokesman for Elijah Muhammad. He was a highly effective grassroots activist and successfully recruited thousands of urban blacks to join the organization. In 1959 a television program entitled *The Hate That Hate Produced* resulted in a focused public scrutiny of the Nation of Islam and its followers, who became known to many U.S. citizens as Black Muslims. Increasingly Malcolm was seen as the national spokesman for the Black Muslims, and he was often sought out for his opinion on public issues. In vitriolic public speeches on behalf of the Nation of Islam, he described whites in the United States as devils and called for African Americans to reject any attempt to integrate them into a white racist society. As a Nation of Islam minister, he denounced Jews and criticized the more cautious mainstream CIVIL RIGHTS leaders as traitors who had been brainwashed by a white society. He further challenged the so-called integrationist principles of recognized civil rights leaders such as MARTIN LUTHER KING JR.

Elijah Muhammad took a somewhat less rash approach and favored a general nonengagement policy in place of more confrontational tactics. Malcolm's increasing popularity—as well as his caustic public remarks—began to create tension between him and Elijah Muhammad. Malcolm became frustrated at having to restrain his comments.

When President JOHN F. KENNEDY was assassinated on November 22, 1963, Malcolm exclaimed that Kennedy "never foresaw that the chickens would come home to roost so soon." Malcolm later regretted his comment and explained that he meant that the government's involvement in and tolerance of violence against African Americans and others had created an atmosphere that contributed to the death of the president. Nevertheless, his comments and his increasing public notoriety prompted Elijah Muhammad to "silence" Malcolm and suspend him as a minister on December 1, 1963. Members of the Nation of Islam were instructed not to speak to him.

WE ARE NOT FIGHTING FOR INTEGRATION, NOR ARE WE FIGHTING FOR SEPARATION. WE ARE FIGHTING FOR RECOGNITION AS HUMAN BEINGS. WE ARE FIGHTING FOR ... HUMAN RIGHTS.
—MALCOLM X

However, by 1963 Malcolm had become disillusioned by the Nation of Islam, particularly with rumors that Elijah Muhammad had been unfaithful to his wife and had fathered several illegitimate children. On March 8, 1964—while still under suspension from the Nation of Islam—Malcolm formally announced his separation from the organization. He soon announced the creation of his own organization, Moslem Mosque, Incorporated (MMI), which would be based in New York. MMI, Malcolm stated, would be a broad-based black nationalist organization intended to advance the spiritual, economic, and political interests of African Americans. On March 26, Malcolm met for the first and only time with Martin Luther King, in Washington, D.C. King at the time was scheduled to testify on the pending CIVIL RIGHTS ACT OF 1964.

In April 1964 Malcolm made a spiritual pilgrimage to Mecca, the holy site of Islam and the birthplace of the prophet Muhammad. He was profoundly moved by the pilgrimage, and said later that it was the start of a radical alteration in his outlook about race relations.

Upon his return to the United States, Malcolm began to use the name El-Hajj Malik El-Shabazz Al-Sabann. He also exhibited a profound shift in political and social thinking. Whereas in the past he had advocated against cooperation with other civil rights leaders and organizations, his new philosophy was to work with existing organizations and individuals, including whites, so long as they were sincere in their efforts to secure basic civil rights and freedoms for African Americans. In June 1964 he founded the secular Organization of Afro-American Unity (OAAU), which espoused a pan-Africanist approach to basic HUMAN RIGHTS, particularly the rights of African Americans. He traveled and spoke extensively in Africa to gain support for his pan-Africanist views. He pledged to bring the condition of African Americans before the General Assembly of the UNITED NATIONS and thereby "internationalize" the civil rights movement in the United States. He further pledged to do whatever was necessary to bring the black struggle from the level of civil rights to the level of human rights. When he advocated for the right of African Americans to use arms to defend themselves against violence, he not only laid the groundwork for a subsequent growth of the BLACK POWER MOVEMENT, but also led many U.S. citizens to believe that he advocated violence. However, in his autobiography, Malcolm said that he was not advocating wanton violence but calling for the right of individuals to use arms in SELF-DEFENSE when the law failed to protect them from violent assaults.

In 1965 Malcolm's increasing public criticism of Elijah Muhammad and the Nation of Islam prompted anonymous threats against his life. In his attempts to forge relationships with established civil rights organizations such as the STUDENT NON-VIOLENT COORDINATING COMMITTEE, Malcolm was criticized severely in the Nation of Islam's official publications. In a December 1964 article in *Muhammad Speaks*—the official newspaper of the Nation of Islam—Louis X (now known as Louis Farrakhan) said, "[S]uch a man as Malcolm is worthy of death, and would have met with death if it had not been for Muhammad's confidence in Allah for victory over the enemies."

On February 14, 1965, Malcolm's home in Queens, New York—which was still owned by the Nation of Islam—was firebombed while he and his family were asleep. Malcolm attributed the bombing to Nation of Islam supporters but no one was ever charged with the crime. One week later, when Malcolm stepped to the podium at the Audubon Ballroom in New York to present a speech on behalf of the OAAU, he

was assassinated. The gunmen, later identified as former or current members of the Nation of Islam, were convicted and sentenced to life imprisonment in April 1966.

Malcolm left a complex political and social legacy. Although he was primarily a black nationalist in perspective, his changing philosophy and politics toward the end of his life demonstrate the unfinished development of an influential figure. Although some people point to his identification with the Nation of Islam and dismiss him as a racial extremist and anti-Semite, his later thinking reveals profound changes in his perspective and a more universal understanding of the problems of African Americans. In his eulogy of Malcolm, the U.S. actor Ossie Davis said,

> However we may have differed with him—or with each other about him and his value as a man—let his going from us serve only to bring us together, now. Consigning these mortal remains to earth, the common mother of all, secure in the knowledge that what we place in the ground is no more now a man—but a seed—which, after the winter of our discontent, will come forth again to meet us.

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The actions of Los Angeles residents who rioted and looted in the wake of the 1992 Rodney King trial verdict represented malfeasance, a breach of the duty of care.

AP IMAGES

MALFEASANCE

The commission of an act that is unequivocally illegal or completely wrongful.

Malfeasance is a comprehensive term used in both civil and CRIMINAL LAW to describe any act that is wrongful. It is not a distinct crime or TORT, but may be used generally to describe any act that is criminal or that is wrongful and gives rise to, or somehow contributes to, the injury of another person.

Malfeasance is an affirmative act that is illegal or wrongful. In tort law it is distinct from misfeasance, which is an act that is not illegal but is improperly performed. It is also distinct from NONFEASANCE, which is a failure to act that results in injury.

The distinctions between malfeasance, misfeasance, and nonfeasance have little effect on tort law. Whether a claim of injury is for one or the other, the plaintiff must prove that the defendant owed a duty of care, that the duty was breached in some way, and that the breach caused injury to the plaintiff.

One exception is that under the law of STRICT LIABILITY, the plaintiff need not show the absence of due care. The law of strict liability usually is applied to PRODUCT LIABILITY cases, where a manufacturer can be held liable for harm done by a product that was harmful when it was placed on the market. In such cases the plaintiff need not show any actual malfeasance on the part of the manufacturer. A mistake is enough to create liability because the law implies that for the sake of public safety, a manufacturer warrants a product's safety when it offers the product for sale.

MALICE

The intentional commission of a wrongful act, absent justification, with the intent to cause harm to others; conscious violation of the law that injures another individual; a mental state indicating a disposition in disregard of social duty and a tendency toward malfeasance.

In its legal application, the term *malice* is comprehensive and applies to any legal act that is committed intentionally without JUST CAUSE or

excuse. It does not necessarily imply personal hatred or ill feelings, but rather, it focuses on the mental state that is in reckless disregard of the law in general and of the legal rights of others. An example of a malicious act would be committing the TORT of slander by labeling a nondrinker an alcoholic in front of his or her employees.

When applied to the crime of murder, malice is the mental condition that motivates one individual to take the life of another individual without just cause or provocation.

In the context of the FIRST AMENDMENT, public officials and public figures must satisfy a standard that proves *actual malice* in order to recover for LIBEL or slander. The standard is based upon the seminal case of NEW YORK TIMES V. SULLIVAN, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964), where the Supreme Court held that public officials and public figures cannot be awarded damages unless they prove that the person accused of making the false statement did so with knowledge that the statement was false or with reckless disregard as to the truth or falsity of the statement. Demonstrating malice in this context does not require the plaintiff to show that the person uttering the statement showed ill will or hatred toward the public official or public figure.

MALICE AFORETHOUGHT

A predetermination to commit an act without legal justification or excuse. A malicious design to injure. An intent, at the time of a killing, willfully to take the life of a human being, or an intent willfully to act in callous and wanton disregard of the consequences to human life; but malice aforethought *does not necessarily imply any ill will, spite or hatred towards the individual killed.*

MALICIOUS

Involving malice; characterized by wicked or mischievous motives or intentions.

An act done maliciously is one that is wrongful and performed willfully or intentionally, and without legal justification.

MALICIOUS MISCHIEF

Willful destruction of PERSONAL PROPERTY *of another, from actual ill will or resentment towards its owner or possessor. Though only a* TRESPASS *at the* COMMON LAW*, it is now a misdemeanor in most states.*

MALICIOUS PROSECUTION

An action for damages brought by one against whom a civil suit or criminal proceeding has been unsuccessfully commenced without PROBABLE CAUSE *and for a purpose other than that of bringing the alleged offender to justice.*

An action for malicious prosecution is the remedy for baseless and malicious litigation. It is not limited to criminal prosecutions but may be brought in response to any baseless and malicious litigation or prosecution, whether criminal or civil. The criminal defendant or civil respondent in a baseless and malicious case may later file this claim in civil court against the parties who took an active role in initiating or encouraging the original case. The defendant in the initial case becomes the plaintiff in the malicious prosecution suit, and the plaintiff or prosecutor in the original case becomes the defendant. In most states the claim must be filed within a year after the end of the original case.

A claim of malicious prosecution is a tort action. A TORT action is filed in civil court to recover money damages for certain harm suffered. The plaintiff in a malicious prosecution suit seeks to win money from the respondent as recompense for the various costs associated with having to defend against the baseless and vexatious case.

The public policy that supports the action for malicious prosecution is the discouragement of VEXATIOUS LITIGATION. This policy must compete against one that favors the freedom of law enforcement officers, judicial officers, and private citizens to participate and assist in the administration of justice.

In most jurisdictions an action for malicious prosecution is governed by the COMMON LAW. This means that the authority to bring the action lies in case law from the courts, not statutes from the legislature. Most legislatures maintain some statutes that give certain persons IMMUNITY from malicious prosecution for certain acts. In Colorado, for example, a merchant, a merchant's employee, or a police officer, who reasonably suspects that a theft has occurred, may detain and question the suspect without fear of liability for slander, false arrest, FALSE IMPRISONMENT, unlawful detention, or malicious

prosecution (Colo. Rev. Stat. Ann. § 18-4-407 [West 1996]).

An action for malicious prosecution is distinct from an action for false arrest or false imprisonment. If a person is arrested by a police officer who lacks legal authority for the arrest, the proper remedy is an action for false arrest. If a person is confined against her or his will, the proper remedy is an action for false imprisonment. An action for malicious prosecution is appropriate only when the judicial system has been misused.

Elements of Proof

To win a suit for malicious prosecution, the plaintiff must prove four elements: (1) that the original case was terminated in favor of the plaintiff, (2) that the defendant played an active role in the original case, (3) that the defendant did not have probable cause or reasonable grounds to support the original case, and (4) that the defendant initiated or continued the initial case with an improper purpose. Each of these elements presents a challenge to the plaintiff.

The Original Case Was Terminated in Favor of the Plaintiff The original case must end before the defendant or respondent in that case may file a malicious prosecution suit. This requirement is relatively easy to prove. The original case qualifies as a prosecution if the defendant or respondent had to appear in court. The original case need not have gone to trial: it is enough that the defendant or respondent was forced to answer to a complaint in court. If the original case is being appealed, it is not considered terminated, and the defendant or respondent must wait to file a malicious prosecution suit.

To proceed with a malicious prosecution claim, the plaintiff must show that the original case was concluded in her or his favor. Generally, if the original case was a criminal prosecution, it must have been dismissed by the court, rejected by the GRAND JURY, abandoned by the prosecutor, or decided in favor of the accused at trial or on appeal. If the original case was a civil suit, the respondent must have won at trial or the trial court must have disposed of the case in favor of the respondent (now the plaintiff).

If recovery by the plaintiff in a civil action was later reversed on appeal, this does not mean that the action was terminated in favor of the respondent. However, if the plaintiff in the original case won by submitting fabricated evidence or by other fraudulent activity, a reversal on such grounds may be deemed a termination in favor of the respondent. A settlement between the plaintiff and the respondent in a civil suit is not a termination in favor of the respondent. Likewise, courts do not consider a plea bargain in a criminal case to be a termination in favor of the defendant.

The Defendant Played an Active Role in the Original Case In a malicious prosecution suit, the plaintiff must prove that the defendant played an active role in procuring or continuing the original case. The plaintiff must prove that the defendant did more than simply participate in the original case. False testimony alone, for example, does not constitute malicious prosecution. Moreover, witnesses are immune from suit for DEFAMATION, even if they lie on the witness stand. Such is the case because the concept of a fair and free trial requires that witnesses testify without fear of having to defend a defamation suit owing to their testimony.

An action for malicious prosecution focuses on the abuse of legal process, not on defamatory, untruthful statements. If a person helps another person launch a baseless case or takes action to direct or aid such a case, the first person may be held liable for malicious prosecution. The defendant must have been responsible in some way for the institution or continuation of the baseless case. This position of responsibility does not always include criminal prosecutors and civil plaintiffs. For example, if a prosecutor bringing criminal charges is tricked into prosecuting the case by an untruthful third party, the deceiving party is the one who may be found liable for malicious prosecution, not the prosecutor.

The Defendant Did Not Have Probable Cause to Support the Original Case The plaintiff must prove that the person who began or continued the original case did not have probable cause to do so. Generally, this means proving that the person did not have a reasonable belief in the plaintiff's guilt or liability. In examining this element, a court will look at several factors, including the reliability of all sources, the availability of information, the effort required to obtain information, opportunities given to the accused to offer an explanation, the reputation of the accused, and the necessity in the original case for speedy judicial action.

A failure to fully investigate the facts surrounding a case may be sufficient to prove a lack of probable cause. The termination of the original case in favor of the original defendant (now the plaintiff) may help to prove a lack of probable cause, but it may not be decisive on the issue. The plaintiff should present enough facts to allow a reasonable person to infer that the defendant acted without a reasonable belief in the plaintiff's guilt or liability in beginning or continuing the original case.

In a criminal case, an acquittal does not constitute a lack of probable cause. A criminal defendant stands a better chance of proving lack of probable cause if the original case was dismissed by prosecutors, a grand jury, or the court before the case went to trial. The criminal process provides several safeguards against prosecutions that lack probable cause, so a full criminal trial tends to show the presence of probable cause. Civil cases do not have the same safeguards, so a full civil trial does not tend to prove probable cause.

The Defendant Initiated or Continued the Original Case with an Improper Purpose In a malicious prosecution, the plaintiff must prove with specific facts that the defendant instituted or continued the original proceeding with an improper purpose. Sheer ill will constitutes an improper purpose, and it may be proved with facts that show that the defendant resented the plaintiff or wanted somehow to harm the plaintiff. However, the plaintiff does not have to prove that the defendant felt personal malice or hostility toward the plaintiff. Rather, the plaintiff need only show that the defendant was motivated by something other than the purpose of bringing the plaintiff to justice.

Few defendants admit to improper purposes, so improper purpose usually must be inferred from facts and circumstances. If the plaintiff cannot discover any apparent purpose, improper purpose can be inferred from the lack of probable cause.

Hodges v. Gibson Products Co. *Hodges v. Gibson Products Co.,* 811 P.2d 151 (Utah 1991), contained all the elements of a malicious prosecution. According to Chad Crosgrove, the manager of Gibson Discount Center in West Valley, Utah, store money was noticed missing during the afternoon of September 4, 1981. Both Crosgrove and part-time bookkeeper Shauna Hodges had access to the money, and both denied taking it. On September 9 Crosgrove and Gibson officials went to the local police station, where they lodged an accusation of theft against Hodges. Crosgrove was not accused. Hodges was arrested, handcuffed, and taken to jail. After a PRELIMINARY HEARING, she was released on bail and ordered to return for trial on May 12, 1982.

After Hodges was formally charged, an internal audit at Gibson revealed that Crosgrove had embezzled approximately $9,000 in cash and goods from the store. The thefts had occurred over a time period that included September 4, 1981. Gibson still did not charge Crosgrove with theft. Instead, it allowed him to resign with a promise to repay the money.

The night before Hodges's trial was to begin, and almost two months after Crosgrove's EMBEZZLEMENT was discovered, management at Gibson notified Hodges's prosecutor of Crosgrove's activities. The prosecutor immediately dropped the charges against Hodges. Hodges then filed a suit for malicious prosecution against Gibson and against Crosgrove.

At trial Hodges was able to prove all the elements of malicious prosecution to the jury's satisfaction: (1) She had been subjected to prosecution for theft, and the matter had been terminated in her favor. (2) She had sued the correct parties, because Gibson and Crosgrove were responsible for instituting the original proceedings against her. (3) She had ample evidence that the original prosecution was instituted without probable cause because Gibson failed to investigate Crosgrove until after she had been arrested and because the prosecutor dismissed the charges against her. (4) Finally, there were enough facts for the jury to infer that both Gibson and Crosgrove had acted with improper motive: Gibson had acted with an apparent bias against Hodges, and Crosgrove apparently had accused Hodges for self-preservation. The jury awarded Hodges a total of $88,000 in damages: $77,000 from Gibson and $11,000 from Crosgrove. The verdict was upheld on appeal.

Damages

The plaintiff in an action for malicious prosecution can recover money from the defendant for certain harms suffered. Typical injuries include loss of reputation and credit, humiliation, and mental suffering. If the original action

was a criminal case, additional harms often include discomfort, injury to health, loss of time, and deprivation of society with family.

If the plaintiff suffered an economic loss directly related to the original action, the plaintiff can also recover the amount lost. This amount includes attorneys' fees and court costs incurred by the plaintiff in defending the original case.

Finally, the plaintiff may recover PUNITIVE DAMAGES. Punitive damages are imposed by judges and juries to punish misconduct by a party. Because an action for malicious prosecution requires proof of improper intent on the part of the defendant, punitive damages commonly are awarded to malicious prosecution plaintiffs who win damages awards.

Other Considerations

Actions for malicious prosecution must compete against the public interest in allowing parties to pursue cases unfettered by the specter of a retaliatory case. Very few civil or criminal cases result in an action for malicious prosecution. This is because it is difficult to prove that the defendant procured or continued the original case without probable cause and with an improper purpose.

Another difficulty for the plaintiff in an action for malicious prosecution is immunity. Generally, the law protects witnesses, police officers, judges, prosecutors, and lawyers from suit for malicious prosecution. Witnesses are given immunity because justice requires that they testify without fear of reprisals. Law enforcement and judicial officers are given immunity because they must be free to perform their duties without continually defending against malicious prosecution cases.

There are exceptions, however. If a law enforcement or judicial official ventures outside the bounds of official duties to instigate or continue a malicious prosecution, the official may be vulnerable to a malicious prosecution suit. For example, a prosecutor who solicits fabricated testimony to present to a grand jury may be sued for malicious prosecution. The prosecutor would receive only limited immunity in this instance because the solicitation of evidence is an administrative function, not a prosecutorial function (*Buckley v. Fitzsimmons,* 509 U.S. 259, 113 S. Ct. 2606, 125 L. Ed. 2d 209 [1993]).

Private parties may also at times enjoy immunity from actions for malicious prosecution. For example, a person who complains to a disciplinary committee about an attorney may be immune. This general rule is followed by courts to avoid discouraging the reporting of complaints against attorneys.

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CROSS REFERENCES

False Arrest; Malice; Probable Cause; Tort Law.

MALPRACTICE

The breach by a member of a profession of either a standard of care or a standard of conduct.

Malpractice refers to NEGLIGENCE or misconduct by a professional person, such as a lawyer, a doctor, a dentist, or an accountant. The failure to meet a standard of care or standard of conduct that is recognized by a profession reaches the level of malpractice when a client or patient is injured or damaged because of error.

After the 1970s the number of malpractice suits filed against professionals greatly increased. Most malpractice suits involved doctors, especially surgeons and other specialists who performed medical procedures with a high degree of risk to their patients. Large damage awards against doctors resulted in higher malpractice insurance costs. Similarly, the increase of malpractice awards against lawyers led to higher insurance premiums and caused some insurance companies to stop writing malpractice policies altogether.

The typical malpractice suit will allege the TORT of negligence by the professional. Negligence is conduct that falls below the legally established standard for the protection of others against unreasonable risk of harm. Under negligence law a person must violate a reasonable standard of care. Typically this has meant the customary or usual practice of members of the profession. For example, if a surgeon leaves a sponge or surgical tool inside a patient, the surgeon's carelessness violates a basic standard of care. Likewise, if an attorney fails to file a lawsuit for a client within the time limits required by law, the attorney may be charged with negligence.

Medical Malpractice

Among physicians, malpractice is any bad, unskilled, or negligent treatment that injures the patient. The standard of care formerly was considered to be the customary practice of a particular area or locality. Most states have modified the "locality rule" into an evaluation of the standard of practice in the same or similar locality, combined with an examination of the state of development of medical science at the time of the incident. This modification has taken place as medicine has become increasingly uniform and national in scope. A majority of states define the standard of conduct as that degree of skill and learning ordinarily possessed and used by other members of the profession. A doctor who has met the standard, as established by EXPERT TESTIMONY at trial, cannot generally be found negligent. Some states have passed statutes that establish the standard of the profession as the test of whether particular treatment was negligent.

Specialists within the medical field are generally held to standards of care that are higher than those for general practitioners. In addition, a specialist or anyone undertaking to perform procedures ordinarily done by a specialist will be held to the level of performance applied to that specialty, although the person may not actually be a certified specialist in that field.

A small number of states apply the "respectable minority rule" in evaluating doctors' conduct. This rule exempts a physician from liability where he chooses to follow a technique used only by a small number of respected practitioners. Courts, however, frequently have difficulty in determining what is a respectable minority of physicians or acceptable support for a particular technique.

Some states use the "error in judgment rule." This principle holds that a medical professional who otherwise subscribes to applicable professional standards should not be found to have committed malpractice merely because she committed an error in judgment in choosing among different therapeutic approaches or in diagnosing a condition.

Legal Malpractice

The four general areas of LEGAL MALPRACTICE are negligent errors, negligence in the professional relationship, fee disputes, and claims filed by an adversary or nonclient against a lawyer. As in the medical field, lawyers must conform to standards of conduct recognized by the profession.

A lawyer has the duty, in all dealings and relations with a client, to act with honesty, GOOD FAITH, fairness, integrity, and fidelity. A lawyer must possess the legal skill and knowledge that is ordinarily possessed by members of the profession.

Once the lawyer and the client terminate their relationship, a lawyer is not allowed to acquire an interest that is adverse to a client, in the event that this might constitute a breach of the ATTORNEY-CLIENT PRIVILEGE. In addition, lawyer cannot use information that he or she obtained from a client as a result of their relationship. For example, it would constitute unethical behavior for an attorney to first advise a client to sell a piece of property so it would not be included in the client's PROPERTY SETTLEMENT upon DIVORCE and then to purchase the property from the client for half its market value.

Any dealings that a lawyer has with a client will be carefully examined. Such dealings require fairness and honesty, and the lawyer

must show that no UNDUE INFLUENCE was exercised and that the client received the same benefits and advantages as if she had been dealing with a stranger. If the client had independent legal advice about any transaction, that is usually sufficient to meet the lawyer's burden to prove fairness.

A lawyer also has the duty to provide a client with a full, detailed, and accurate account of all money and property handled for him or her. The client is entitled to receive anything that the lawyer has acquired in violation of his duties to the client.

If a lawyer fails to promptly pay all funds to his client, the lawyer may be required to pay interest. A lawyer is liable for fraud—except when the client caused the attorney to commit fraud—and is generally liable for any damages resulting to the client by his negligence. In addition, a lawyer is responsible for the acts of his associates, clerks, legal assistants, and partners and may be liable for their acts if they result in losses to the client.

Negligent errors are most commonly associated with legal malpractice. This category is based on the premise that an attorney has committed an error that would have been avoided by a competent attorney who exercises a reasonable standard of care. Lawyers who give improper advice, improperly prepare documents, fail to file documents, or make a faulty analysis in examining the title to real estate may be charged with malpractice by their clients. A legal malpractice action, however, is not likely to succeed if the lawyer committed an error because an issue of law was unsettled or debatable.

Many legal malpractice claims are filed because of negligence in the professional relationship. The improper and unprofessional handling of the attorney-client relationship leads to negligence claims that are not based on the actual services provided. Lawyers who fail to communicate with their clients about the difficulties and realities of the particular claim risk malpractice suits from dissatisfied clients who believe that their lawyer was responsible for losing the case.

Another area of legal malpractice involves fee disputes. When attorneys sue clients for attorneys' fees, many clients assert malpractice as a defense. As a defense, it can reduce or totally eliminate the lawyer's recovery of fees. The frequency of these claims is declining, in part perhaps because attorneys are reluctant to sue to recover their fees.

A final area of legal malpractice litigation concerns claims that do not involve a deficiency in the quality of the lawyer's legal services provided to the client, but an injury caused to a third party because of the lawyer's representation. This category includes tort claims filed against an attorney alleging MALICIOUS PROSECUTION, ABUSE OF PROCESS, DEFAMATION, infliction of emotional distress, and other theories based on the manner in which the attorney represented the client. These suits rarely are successful except for malicious prosecution. Third-party claims also arise from various statutes, such as SECURITIES regulations, and motions for sanctions, such as under Federal Rule of Civil Procedure 11.

Clergy Malpractice

A growing number of lawsuits against churches and clergy began to be filed in the 1980s, where plaintiffs sued churches as they might sue a corporation or a government agency. Those lawsuits alleged CLERGY MALPRACTICE. In them, the plaintiffs claimed that clergy members should be legally held to a higher standard of conduct than ordinary citizens should, in the same way as other professionals in positions of trust, such as doctors or lawyers. The majority of courts have ruled that standards of clergy conduct would violate the First Amendment's separation of church and state. However, some courts have accepted narrower claims accusing individual clergy members of inflicting emotional distress or breaching their fiduciary duty.

In *Nally vs. Grace Community Church of the Valley*, 763 P.2d 948 (Cal. 1988), the California Supreme Court in 1988 rejected a lawsuit accusing the pastors of a Protestant church in Los Angeles of negligence for failing to prevent the 1979 suicide of a 24-year-old man who was a church member. The lawsuit, brought by his parents, argued that the pastors should have referred him to a professional counselor when they learned he had suicidal tendencies.

In 2001 the Utah Supreme Court unanimously upheld the dismissal of *Franco v. The Church of Jesus Christ of Latter-day Saitns,* 21 P.3d 19 (Utah 2001). In that case, Lynette Franco sued the MORMON CHURCH for negligence for telling her to forgive and forget a 1986

incident in which she claimed to have been the victim of child rape at the hands of another church member. Lawyers for Franco had initially included an allegation of clergy misconduct in the lawsuit, but later dropped it, focusing instead on FRAUD, negligence and infliction of distress. But the court rejected it nevertheless, ruling that setting a standard for clergy conduct would embroil the courts in establishing the training, skill and standards applicable for members of the clergy in this state in a diversity of religions professing widely varying beliefs. The justices, all Mormons, were unanimous in their ruling.

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Attorney Misconduct; Ethics, Legal; Health Care Law; Medical Malpractice; Physicians and Surgeons; Privileged Communication.

MAN-IN-THE-HOUSE RULE

A regulation that was formerly applied in certain jurisdictions that denied poor families WELFARE *payments in the event that a man resided under the same roof with them.*

Under the man-in-the-house rule, a child who otherwise qualified for welfare benefits was denied those benefits if the child's mother was living with, or having relations with, any single or married able-bodied male. The man was considered a substitute father, even if the man was not supporting the child.

Before 1968 administrative agencies in many states created and enforced the man-in-the-house rule. In 1968 the U.S. Supreme Court struck down the regulation as being contrary to the legislative goals of the Aid to Families of Dependent Children (AFDC) program. The AFDC program, established by the Social Security Act of 1935 (49 Stat. 620, *as amended* [42 U.S.C.A. § 301 et seq.]), provides benefits to the children of impoverished parents.

In *King v. Smith,* 392 U.S. 309, 88 S. Ct. 2128, 20 L. Ed. 2d 1118 (1968), the U.S. Supreme Court entertained a challenge to the man-in-the-house rule brought by the four children of Mrs. Sylvester Smith, a widow. These children were denied benefits by Dallas County, Alabama, welfare authorities based on their knowledge that a man named Williams was visiting Smith on weekends and had sexual relations with her.

The children of Smith filed a CLASS ACTION suit in federal court on behalf of other children in Alabama who were denied benefits under Alabama's "substitute father" regulation. This regulation considered a man a substitute father if (1) he lived in the home with the mother; (2) he visited the home frequently for the purpose of living with the mother; or (3) he cohabited with the mother elsewhere (*King,* citing Alabama Manual for Administration of Public Assistance, pt. I, ch. II, § VI). Testimony in the case revealed that there was some confusion among the authorities over how to interpret the regulation. One official testified that the regulation applied only if the parties had sex at least once a week, another official testified that sex every three months was sufficient, and still another placed the frequency at once every six months.

According to the High Court, Congress did not intend that the AFDC program require children "to look for their food to a man who is not in the least obliged to support them." The Court maintained that when Congress used the term *parent* in the SOCIAL SECURITY ACT, it was referring to "an individual who owed to the child a state-imposed legal duty of support." Ultimately, the Court struck down the man-in-the-house rule by holding that under the AFDC provisions in the Social Security Act, "destitute children who are legally fatherless cannot be flatly denied federally funded assistance on the transparent fiction that they have a substitute father."

MANAGED CARE

Managed care is a general term that refers to health plans that attempt to control the cost and quality of care by coordinating medical and other health-related services.

The U.S. health care system has undergone major structural changes since the 1970s. The traditional way of obtaining medical care has been for a patient to choose a doctor and then pay that doctor for the services provided. This fee-for-service model, which has been financially rewarding for doctors, gives the patient the right to choose a physician. But the fee-for-service model underwent a rapid decline in the

1980s and 1990s as the concept of managed care took hold in the health care industry.

Managed care is a new term for an old medical financing plan known as the health maintenance organization (HMO). HMOs are not insured plans. They are prepaid health care systems, offering services to which the member is entitled, as opposed to a dollar amount guaranteed by an insurance policy. Doctors are paid a set amount of money monthly for each patient regardless of the level or frequency of care provided.

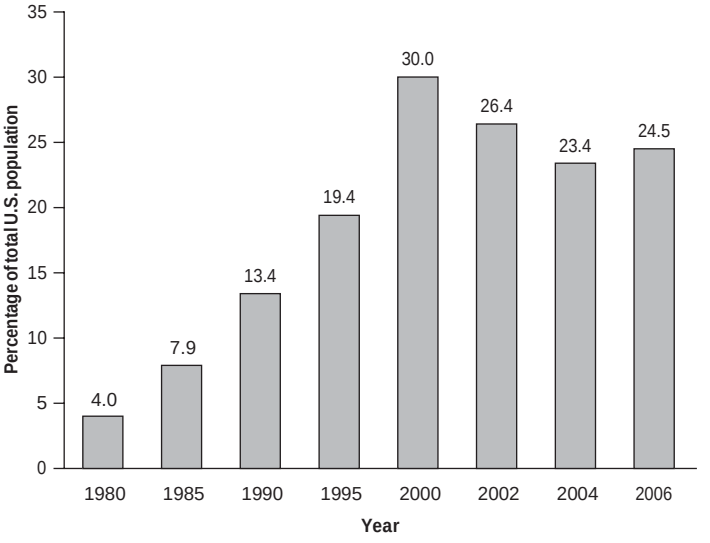
HMOs emphasize preventive care. They became popular with employers who purchase health care coverage for their employees because they charged lower fees than insurance plans that reimburse patients for fee-for-service payments. Holding down the cost of medical care was one of the chief aims of HMOs.

The first HMOs were started around 1930. The Kaiser Foundation Health Plan of California was one of the first and largest HMOs. Another large HMO is the Health Insurance Plan of Greater New York. Both Kaiser and Health Plan also have their own hospitals. The federal government has promoted HMOs since the 1970s, enacting the Health Maintenance Organization Act of 1973 (87 Stat. 931) and other legislation that allows HMOs to meet federal standards for MEDICARE and MEDICAID eligibility.

A person who participates in an HMO deals with a primary care physician, who directs the person's medical care and determines whether he or she should be referred for specialty care. This *gatekeeper* function has drawn both criticism and praise. Critics argue that a person restricted to a physician not of his or her choosing, who has complete control over whether the person will be seen by a specialist or be given special drugs or treatments. Critics also argue that HMO physicians are not allowed to perform thorough testing procedures because of the demands of HMO management to limit costs and that this ultimately leads to rationing of medical treatment.

Advocates of HMOs and managed care argue that it is an advantage to the patient to have one physician with full responsibility for his or her care. With few exceptions, these primary care physicians are trained as general practitioners, family practice physicians, pediatricians, internists, or obstetrician-gynecologists.

Enrollment in Health Maintenance Organizations (HMOs), 1980 to 2006



SOURCE: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, *Health, United States, 2007*.

ILLUSTRATION BY GGS CREATIVE RESOURCES. REPRODUCED BY PERMISSION OF GALE, A PART OF CENGAGE LEARNING.

The debate over NATIONAL HEALTH CARE reform escalated during the first term of the Clinton administration. President BILL CLINTON sought to overhaul the U.S. health care system by guaranteeing universal coverage while simultaneously controlling costs. His plan, which emphasized the managed care model, died in Congress, yet managed care continues to grow. Medicaid, the state-operated, but federally and state-funded health care plans for the poor, started in 1966 as a fee-for-service program. By the 1990s, the conversion of Medicaid to a managed care model of service delivery had grown rapidly, serving as many as 10 million people.

The early promise of HMOs has given way to deep concerns about the steady escalation of health care costs. From 2004 to 2009, double-digit, annual premium increases were hurting employers, employees, and small business owners who purchase their own health insurance. From 1999 to 2009 employers saw their premiums rise 120 percent. HMOs defend the rise in costs by pointing to advances in medical technology that require the purchase of high-priced equipment, rising prescription drug prices, and a U.S. population that demands increasingly more services, in particular the aging baby-boomer population. To manage

costs and discourage frivolous visits, most HMOs now require members to make a co-payment for most types of medical visits. HMOs also point to state laws that undercut their management of costs by giving members the right to go outside the HMO network of health providers for services. In addition, members can now take advantage of state laws that provide appeal rights when denied medical services.

HMOs and health insurance companies have challenged these state laws, arguing that the 1974 federal EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) preempted these state laws. ERISA seeks to protect employee benefit programs, which include pension plans and health care plans, through a lengthy set of standards, rules, and regulations. Health care providers have pointed to the comprehensive nature of ERISA as demonstrating the intent of Congress to maintain a uniform national system. However, the U.S. SUPREME COURT has been unsympathetic to these arguments.

In *Moran v. Rush Prudential HMO, Inc.* (536 U.S. 355, 122 S. Ct. 2151, 153 L. Ed. 2d 375 [2002]), the U.S. Supreme Court, in a 5-4 decision, upheld an Illinois law that required HMOs to provide independent review of disputes between the primary care physician and the HMO. Debra Moran had complained of continued numbness, pain, and loss of function and mobility in her right shoulder. A nerve conduction test revealed that she had braxial plexopathy, which involves compression of the nerves. Moran researched this condition and found a doctor in Virginia who performed microsurgery to correct this type of problem. Because the doctor was "out-of-network," Rush Prudential refused to pay for Moran's consultation with him. The doctor diagnosed Moran as suffering from a syndrome that could be corrected with surgery. Moran gave her Illinois primary physician the diagnosis, which was confirmed by two Rush-affiliated thoracic surgeons. Moran was not satisfied with the surgical methods offered by these two doctors. Even though Rush denied her coverage, Moran elected to have the operation performed by the Virginia surgeon. The surgery was a success, but Moran faced medical bills of almost $95,000. She took advantage of the Illinois independent-review law. A year later, the judge determined, based on an independent medical examination, that the surgery performed by the Virginia doctor had been "medically necessary." This conclusion led Moran to ask the state court to order Rush to reimburse her for the medical costs of the surgery. The U.S. Supreme Court upheld the Illinois review law, finding that the law was an insurance regulation rather than a benefit regulation. Therefore, ERISA did not preempt the state regulation.

HMOs suffered an even greater defeat in their quest to manage services and costs when the U.S. Supreme Court upheld "any willing provider" laws passed by Kentucky. The laws permitted HMO members to obtain medical services from outside the designated list of HMO providers. HMOS again objected, contending that ERISA preempted the laws because they clearly dealt with health care benefits. The Court, in *Kentucky Association of Health Plans, Inc. v. Miller* (538 U.S. 329, 123 S. Ct. 1471, 155 L. Ed. 2d 468 [2003]), unanimously rejected this argument. It again characterized the laws as insurance regulations, which are exempt from ERISA PREEMPTION.

In 2009 Congress sought to enact major health reform legislation that would reduce costs, increase the number of individuals having health insurance, and protect consumers. The health insurance industry lobbied vigorously against many of the provisions, including a proposed public option that would make the federal government a health insurer beyond what it funds for Medicare and Medicaid. In March 2010, President Obama signed health insurance reform legislation (P.L. 111-148, the Patient Protection and Affordability Act of 2010).

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Health Care Law; Health Insurance; Physicians and Surgeons.

MANAGER

One who has charge of a corporation and control of its business, or of its branch establishments, divisions, or departments, and who is vested with a certain amount of discretion and independent judgment. A person chosen or appointed to manage, direct, or administer the affairs of another person or of a business, sports team, or the like. The designation of manager *implies general power and permits reasonable inferences that the employee so*

designated is invested with the general conduct and control of the employer's business.

MANDAMUS

[Latin, We comand.] *A writ or order that is issued from a court of superior jurisdiction that commands an inferior tribunal, corporation,* MUNICIPAL CORPORATION*, or individual to perform, or refrain from performing, a particular act, the performance or omission of which is required by law as an obligation.*

A writ or order of mandamus is an extraordinary court order because it is made without the benefit of full judicial process, or before a case has concluded. It may be issued by a court at any time that it is appropriate, but it is usually issued in a case that has already begun.

Generally, the decisions of a lower-court made in the course of a continuing case will not be reviewed by higher courts until there is a final judgment in the case. On the federal level, for example, 28 U.S.C.A. § 1291 provides that appellate review of lower-court decisions should be postponed until after a final judgment has been made in the lower court. A writ of mandamus offers one exception to this rule. If a party to a case is dissatisfied with some decision of the trial court, the party may appeal the decision to a higher court with a petition for a writ of mandamus before the trial proceeds. The order will be issued only in exceptional circumstances.

The writ of mandamus was first used by English courts in the early seventeenth century. It migrated to the courts in the American colonies, and the law on it has remained largely the same ever since. The remedy of mandamus is made available through court opinions, statutes, and court rules on both the federal and state levels. On the federal level, for example, 28 U.S.C.A. § 1651(a) provides that courts "may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

The Supreme Court set forth some guidelines on writs of mandamus in *Kerr v. United*

Petition for a Writ of Mandamus

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMMONWEALTH OF MASSACHUSETTS, et al.
Petitioners,

v.

Docket No. 03-1361
(& consolidated cases)

U.S. ENVIRONMENTAL PROTECTION AGENCY, et al.
Respondents.

**PETITION FOR WRIT OF MANDAMUS
TO COMPEL COMPLIANCE WITH MANDATE**

On April 2, 2007, the U.S. Supreme Court issued its landmark ruling in this case, holding that greenhouse gases are "air pollutants" that the Administrator of the Environmental Protection Agency (EPA) is authorized to regulate under Section 202 of the Clean Air Act. *Massachusetts v. EPA*, 549 U.S._____, 127 S.Ct. 1438, 1459-62 (2007). The Court also struck down EPA's alternative policy grounds for denying a rulemaking petition for regulation of greenhouse gas emissions from new motor vehicles, and it ordered the case remanded for further proceedings consistent with its opinion. *Id.* at 1462-63. The Court's ruling requires the Administrator to review the pending rulemaking petition based on proper statutory factors. As discussed below, this means that the agency has to make a formal determination—based solely on the science—as to whether these emissions contribute to "air pollution which may reasonably be anticipated to endanger public health or welfare." *See* 42 U.S.C. 7521(a).

A full year later, the EPA Administrator has not complied with the Supreme Court's order and mandate issued by this Court to effectuate that order. As EPA's own statements and a Congressional inquiry demonstrate: the Administrator publicly set a firm deadline for making the endangerment determination by the end of 2007; the agency has already completed all of its work on issues that, under the Supreme Court's decision, are relevant to that determination; the Administrator has in fact made an internal decision in favor of endangerment; and the Administrator has forwarded the full formal write-up of that determination to the White House Office of Management and Budget. The publication of the endangerment determination, however, is now being withheld. The Administrator has refused to give the petitioners of Congress a timetable for action, and he has explained his delay by reference to considerations that are not legally relevant under the Supreme Court's ruling.

CONCLUSION

For the reasons set forth above, Petitioners respectfully request that this Court issue a writ of mandamus requiring EPA to issue within sixty days its determination on whether the air pollution to which greenhouse gas emissions from motor vehicles contribute "may reasonably be anticipated to endanger public health or welfare."

A sample petition for a writ of mandamus

States District Court, 426 U.S. 394, 96 S. Ct. 2119, 48 L. Ed. 2d 725 (1976). In *Kerr,* the Court upheld the denial of a writ of mandamus sought by prison officials to prevent the district court from compelling them to turn over personnel and inmate files to seven prisoners who had sued the prison over alleged constitutional violations. The officials argued that turning over the records would compromise prison communications and confidentiality.

The Supreme Court observed in *Kerr* that the writ of mandamus was traditionally used by federal courts only to confine an inferior court to a lawful exercise of its jurisdiction, or to compel an inferior court to exercise its authority when it had a duty to do so. The Court also noted that mandamus is available only in exceptional cases because it is so disruptive of the judicial process, creating disorder and delay in the trial. The writ would have been appropriate, opined the Court, if the trial court had wrongly decided an issue, if failure to reverse that decision would irreparably injure a party, and if there was no other method for relief. Because the prison officials could claim a privilege to withhold certain documents, and had the right to have the documents reviewed by a judge prior to release to the opposing party, other remedies existed and the writ was inappropriate.

Although traditionally writs of mandamus are rare, they have been issued in a growing number of situations. They have been issued by federal courts when a trial judge refused to dismiss a case even though it lacked jurisdiction; refused to reassign a case despite a conflict of interest; stopped a trial for ARBITRATION or an administrative remedy; denied a party the opportunity to intervene, to file a cross-claim, or to amend a PLEADING; denied a CLASS ACTION; denied or allowed the consolidation or severance of two trials; refused to permit depositions; or entered an order limiting or denying discovery of evidence.

The writ of mandamus can also be issued in a mandamus proceeding, independent of any judicial proceeding. Generally, such a petition for a mandamus order is made to compel a judicial or government officer to perform a duty owed to the petitioner. For example, in Massachusetts each year the commonwealth's attorney general and each district attorney must make available to the public a report on wiretaps and other interceptions of oral communications conducted by law enforcement officers. If the report is not made available, any person may compel its production by filing an action for mandamus (Mass. Gen. Laws Ann. ch. 272, § 99 [West 1996]). If successful, a court would issue an order directing the attorney general and district attorneys to produce the information. The attorney general and district attorneys have a chance to defend their actions at a hearing on the action. If the parties fail to comply with a mandamus order, they may be held in CONTEMPT of court and fined or jailed.

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MANDATE

A judicial command, order, or precept, written or oral, from a court; a direction that a court has the authority to give and an individual is bound to obey.

A mandate might be issued upon the decision of an appeal, which directs that a particular action be taken, or upon a disposition made of a case by an inferior tribunal.

The term *mandate* is also used in reference to an act by which one individual empowers another individual to conduct transactions for an individual in that person's name. In this sense, it is used synonymously with POWER OF ATTORNEY.

MANDATORY

Peremptory; obligatory; required; that which must be subscribed to or obeyed.

Mandatory statutes are those that require, as opposed to permit, a particular course of action. Their language is characterized by such directive terms as "shall" as opposed to "may." A *mandatory provision* is one that must be observed, whereas a directory provision is optional.

An example of a mandatory provision is a law that provides that an election judge must endorse his or her initials on a ballot.

MANDATORY AUTHORITY

Precedents, in the form of prior decisions by a higher court of the same state on point, statutes, or other sources of law that must be considered by a judge in the determination of a legal controversy.

Mandatory authority is synonymous with binding authority.

MANN ACT

The Mann Act (18 U.S.C.A. §2421 et seq.), also known as the White Slave Traffic Act, is a federal criminal statute that deals with prostitution and CHILD PORNOGRAPHY. Enacted in 1910 and named for its sponsor, Representative JAMES R. MANN, of Illinois, it also was used to prosecute men who took women across state lines for consensual sex.

Representative Mann introduced the act in December 1909 at the request of Chicago prosecutors who claimed that girls and women were being forced into prostitution by unscrupulous pimps and procurers. The term *white slavery* became popular to describe the predicament these females faced. It was alleged that men were tricking, coercing, and drugging females to get them involved in prostitution and then forcing them to stay in brothels.

The legislation was intended to stop the interstate trafficking of women. Though federal criminal statutes were rare in 1910, and seen as an attack on state POLICE POWERS, the legislation encountered little opposition. The act made it a felony to transport knowingly any woman or girl in interstate commerce or foreign commerce for prostitution, debauchery, or any other immoral purpose. It also made it a felony to coerce a woman or a girl into such immoral acts. President WILLIAM H. TAFT signed the bill in June 1910.

The U.S. Supreme Court upheld the constitutionality of the Mann Act in *Hoke v. United States,* 227 U.S. 308, 33 S. Ct. 281, 57 L. Ed. 523 (1913). The Court broadened the scope of the act in *Caminetti v. United States,* 242 U.S. 470, 37 S. Ct. 192, 61 L. Ed. 442 (1917), when it ruled that the act applied to noncommercial acts of immorality. In *Caminetti* the Court seized on the phrase "any other immoral purpose," concluding that Congress intended to prevent the use of interstate commerce to promote sexual immorality. This interpretation radically changed the scope of the act.

The Mann Act was used by the FEDERAL BUREAU OF INVESTIGATION to curtail commercialized vice. It was also often used to prosecute prominent persons who did not conform to conventional morality. Jack Johnson, a heavyweight boxing champion, was charged with and convicted of a Mann Act violation in 1912, for taking his mistress across state lines. Over the years, similar charges were leveled against the architect Frank Lloyd Wright, the actor Charlie Chaplin, and the rock and roll singer Chuck Berry. Of these three, only Berry was convicted of a Mann Act violation.

Congress amended the act in 1978 to attack the problem of child PORNOGRAPHY. The amendments made the act's provisions regarding this issue gender neutral, so that both boys and girls who were sexually exploited were now protected (Pub. L. No. 95-225, 92 Stat. 8–9). In 1986 the law was further amended. The new amendments made the entire act gender neutral as to victims of sexual exploitation. More important, all references to debauchery and any other immoral purpose were replaced by the phrase "any sexual activity for which any person can be charged with a criminal offense" (Pub. L. No. 99-628, 100 Stat. 3511–3512.) This change took the federal government out of the business of defining *immoral.* Because most states have repealed criminal laws against fornication and ADULTERY, noncommercial, consensual sexual activity no longer is subject to prosecution.

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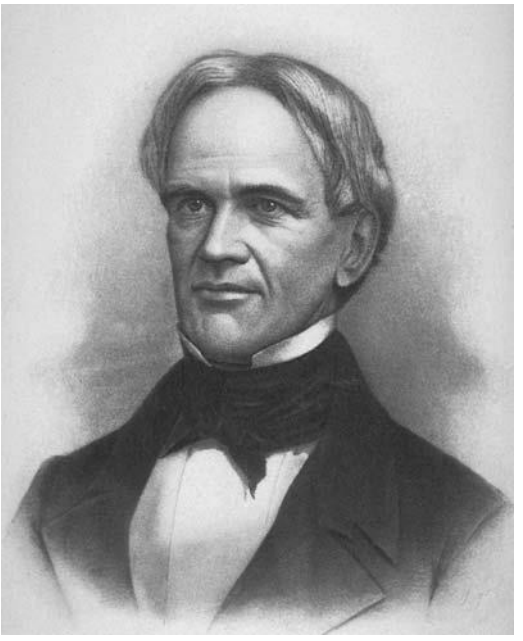
v MANN, HORACE

Attorney, politician, and reformer of U.S. public education Horace Mann transformed the nation's schools. Mann was a gust of wind blowing through the doldrums of nineteenth-century teaching. In 1837 he left a promising career in law and politics to become Massachusetts's first secretary of education. In this capacity, he rebuilt shoddy schools, instituted teacher training, and ensured widespread access

EDUCATION THEN, BEYOND ALL OTHER DEVICES OF HUMAN ORIGIN, IS A GREAT EQUALIZER OF THE CONDITIONS OF MEN,—THE BALANCE WHEEL OF THE SOCIAL MACHINERY.
—HORACE MANN

Horace Mann.
GETTY IMAGES

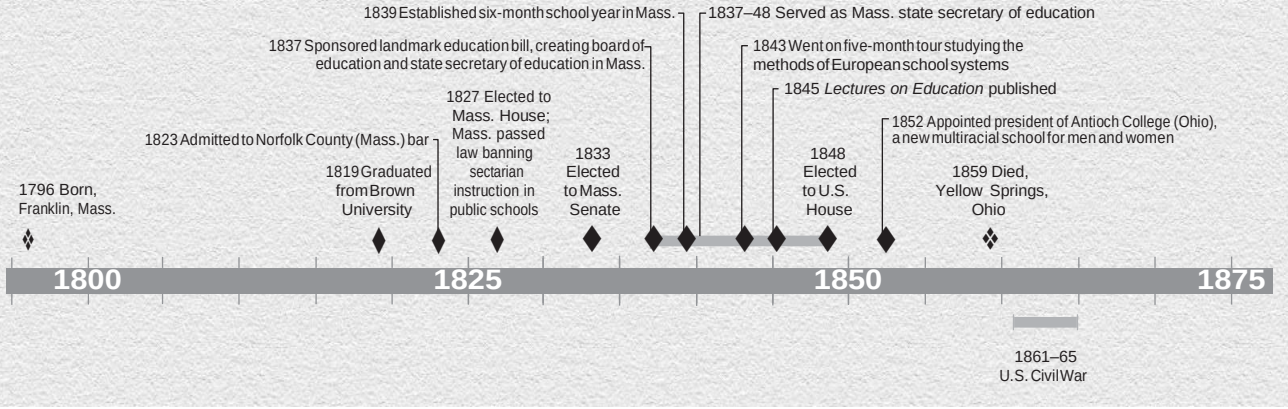


to education for children and adults. These reforms not only revived the state system but also inspired great national progress. The spirit of opportunity and the duty of citizenship guided Mann: "In a republic," he said, "ignorance is a crime." Later, he served in the U.S. Congress before becoming a professor at and the president of Antioch College. Besides these contributions, his legacy to U.S. education is still felt in the contemporary debate over school prayer. He helped wean education from its religious origins in order to create a truly public system.

Mann was born in poverty on May 4, 1796, in Franklin, Massachusetts. His father, Thomas Mann, was a farmer in Franklin. Neither his father nor his mother, Rebecca Mann, received much formal education, which was not widely available in the years following the American Revolution. Little opportunity existed for Mann, a sensitive boy driven to tears by hellfire-and-brimstone sermons on Sundays. Although an avid reader, Mann never attended school for more than ten weeks of the year. His extraordinary mind might have gone no further than the family's ancestral farm were it not for a traveling Latin teacher who tutored him when Mann was 20. Provided with decent instruction, Mann's gifts were revealed: He qualified for entrance as a sophomore to Brown University. He graduated with high honors in 1819; remained briefly as a tutor in Latin and Greek; enrolled in LITCHFIELD LAW SCHOOL, in Connecticut, two years later; and was admitted to the bar of Norfolk County in 1823.

Mann practiced law for 14 years while making his name in politics. He first won election to the Massachusetts House of Representatives in 1827; election to the state senate, where he served as president, followed in 1833. He left his mark on the legislature in two ways: by seeking state help for mentally ill persons and by passing the landmark education bill of 1837. The law created a board of education at a time when Massachusetts's public schools were barely limping along. Buildings were crumbling, teachers underpaid, and teaching methods erratic. Much the same could be said of the nation's public schools. In Massachusetts, moreover, one-third of the children did not attend school at all, and one-sixth of all students

Horace Mann 1796–1859



attended private schools. To clean up this mess, the 1837 law called for the appointment of a state secretary of education. Mann, despite the promise of further success as a lawyer and politician, took the job.

Over the next 12 years, Mann's success was stunning. His efforts rebuilt Massachusetts's education system from the ground up: he centralized control of its schools, invested in better facilities, established institutes for teacher training, revamped the curriculum, discouraged physical punishment, and held annual education conventions for teachers and the public. Educators nationwide sought out his ideas, published in a bimonthly magazine that he founded, called the *Common School Journal,* as well as in ANNUAL REPORTS. In 1843, pursuing new ideas for improving the quality of Massachusetts's system, he toured schools in eight European countries. His praise for the rigors of the German model brought him into open conflict with schoolteachers back home, who thought him critical of their work. Mann stood his ground; he had not spent five months abroad only to be bullied by the status quo.

Even more controversial was Mann's position on Bible reading in public schools. In the mid–nineteenth century, the practice remained a leftover from the colonial period, when schools were each run by a church of an individual sect, or group. Mann thought Bible reading useful for teaching moral instruction, and he promoted it, but only so long as it was done without comment. As a Unitarian, he did not want teachers imposing views on students of different faiths; this had often led to bitter disagreements. (In the early 1840s, disputes over classroom Bible reading would cause Catholic-Protestant riots in New York and Philadelphia.) Under Mann's influence, Massachusetts adhered to the law it had passed in 1827 banning sectarian instruction (instruction specific to or characteristic of a particular religious group) from public schools. Orthodox church leaders sharply attacked Mann, one calling his policy "a grand instrument in the hands of free thinkers, atheists and infidels." History was on Mann's side, however. The sectarian influence would continue to die out over the next half century, a historical trend culminating in the U.S. Supreme Court's landmark rulings banning school prayer in 1962 (ENGEL V. VITALE, 370 U.S. 421, 82 S. Ct. 1261, 8 L. Ed. 2d 601 [1962]) and Bible reading in 1963 (*ABINGTON SCHOOL DISTRICT V. SCHEMPP,* 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 [1963]). Ironically, the prayer ban arose from an attempt by administrators of education in New York to compose a bland, inoffensive prayer in the spirit of Mann's anti-sectarianism.

Mann spent the last decade of his life in public service and education. Resigning the education secretary's post in 1848, he won election to the U.S. Congress and served there four years. A run for governor of Massachusetts failed in 1852, and he accepted the offer of the presidency of newly founded Antioch College, a multiracial school for men and women, where he also taught courses in philosophy and theology. The college suffered financially. Mann's health failed, and he died August 2, 1859, at the age of 63. Shortly before his death, at a commencement ceremony, he left the graduating class to ponder this sterling ideal: "Be ashamed to die until you have won some victory for humanity."

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CROSS REFERENCES

Education Law; Schools and School Districts.

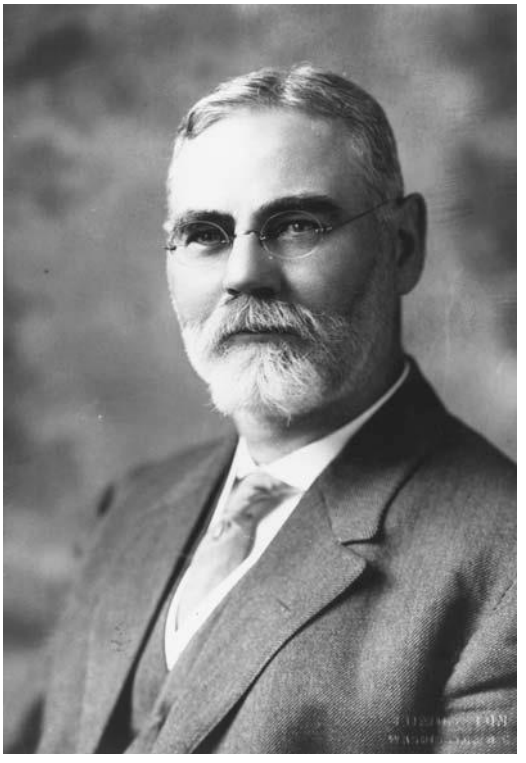
v MANN, JAMES ROBERT

James Robert Mann served in the U.S. House of Representatives from 1897 to 1922. Mann, an Illinois Republican, sponsored three pieces of legislation that enlarged the power of the federal government to regulate the economy and the nation's morals. He is best remembered as the author of the MANN ACT (18 U.S.C.A. § 2421 et seq.), also known as the White Slave Traffic Act.

Mann was born October 20, 1856, in McLean County, Illinois. He graduated from the University of Illinois in 1876 and then attended the Union College of Law (now known as the Northwestern University Law School). Following his admission to the Illinois bar in 1881, Mann joined a prominent Chicago law firm and achieved success as a business attorney.

Mann became active in Chicago politics during the 1880s and was elected to the U.S. House of Representatives in 1897. As a moderate Republican, Mann believed that the federal

ALL OF THE HORRORS WHICH HAVE EVER BEEN URGED, EITHER TRUTHFULLY OR FANCIFULLY, AGAINST THE BLACK-SLAVE TRADE PALE INTO INSIGNIFICANCE AS COMPARED TO THE HORRORS OF THE SO-CALLED 'WHITE-SLAVE TRAFFIC.'
—JAMES MANN



James R. Mann.
LIBRARY OF CONGRESS

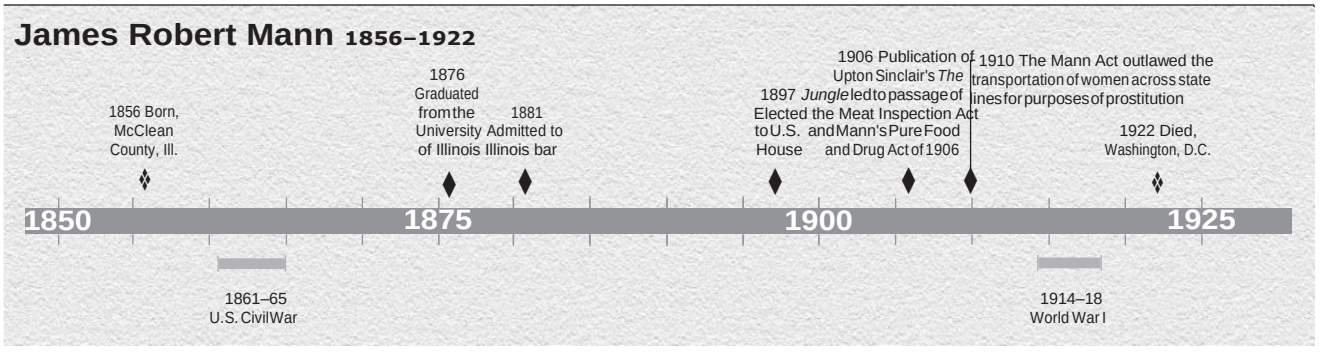
government had a role to play in managing the national economy. His interest in reform was heightened by the work of muckraking journalists who produced sensational investigative articles exposing impure food processing and impure and often fraudulent drugs.

In response to public concerns about the quality of food and medicine, Mann sponsored a major piece of federal legislation, the PURE FOOD AND DRUG ACT OF 1906 (34 Stat. 768). This act invoked the Constitution's COMMERCE CLAUSE for authority to regulate the interstate shipment of food and medicine. The law signaled a change in the state-federal power relationship, which had previously emphasized the right of states to regulate business.

The inspection of food products and medicines by the federal government both reassured the public about the quality of what it consumed and served notice that a national economy required national regulation. Mann demonstrated his continuing interest in regulation with his sponsorship of the Mann-Elkins Act of 1910 (36 Stat. 539). Mann-Elkins gave the INTERSTATE COMMERCE COMMISSION authority to regulate and set the rates for telegraph, telephone, and railroad companies. The law recognized that these modes of communication and transportation were a vital part of the interstate economy and that their rates needed to be regulated by the federal government rather than by the states.

Mann was instrumental in the passage of the Mann Act in 1910. This act grew out of concerns of Chicago authorities that women and girls were being forced into prostitution through a variety of tricks and coercive tactics. The term *white slavery* came to symbolize the predicament of women who were kept in houses of prostitution against their will. It was alleged that "white slaves" (pimps and procurers) lured females from rural states into large cities such as Chicago and then forced them into prostitution.

Responding to pleas from Chicago prosecutors that a federal CRIMINAL LAW was needed, Mann introduced the Mann Act. The act prohibited the transportation of women across state lines for prostitution or "any other immoral purpose." Mann skillfully guided the legislation through the House of Representatives, overcoming congressional Democrats who argued that the act expanded federal POLICE



POWER. Once passed, the Mann Act became a central part of the work of the newly created FEDERAL BUREAU OF INVESTIGATION. Mann died in Washington, D.C., on November 30, 1922.

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MANOR

A house, a dwelling, or a residence.

Historically under ENGLISH LAW, a manor was a parcel of land granted by the king to a lord or other high ranking person. Incident to every manor was the right of the lord to hold a court called the court baron, which was organized to maintain and enforce the services and duties that were owed to the lord of the manor. The lands that constituted the manor holdings included *terrae tenementales,* Latin for "tenemental lands," and *terrae dominicales,* Latin for "demesne lands." The lord gave the tenemental lands to his followers or retainers in freehold. He retained part of the demesne lands for his own use but gave part to tenants in copyhold—those who took possession of the land by virtue of the evidence or copy in the records of the lord's court. A portion of the demesne lands, called the *lord's waste,* served as public roads and common pasture land for the lord and his tenants.

The word *manor* also meant the privilege of having a manor with the jurisdiction of a court baron and the right to receive rents and services from the copyholders.

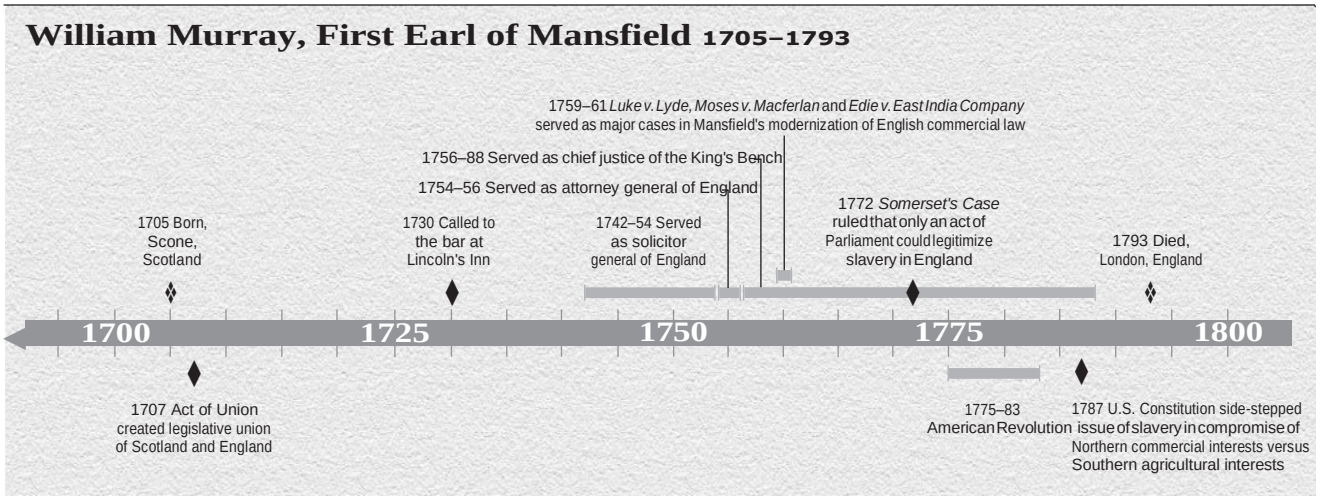
CROSS REFERENCE

Feudalism.

v MANSFIELD, WILLIAM MURRAY, FIRST EARL OF

William Murray, first earl of Mansfield, was an eighteenth-century English lawyer and judge who, along with SIR WILLIAM BLACKSTONE and SIR EDWARD COKE, played an important part in molding U.S. law. His revision of PROPERTY LAW and his formulation of basic principles of contract law provided the basis for modern COMMERCIAL LAW. Lord Mansfield also is remembered for his decision in *Somerset's Case,* 1 Lofft's Rep. 1, 20 Howell's State Trials 1, 98 Eng. Rep. 499 (1772), in which he held that there was no legal basis for SLAVERY in England. This case came to have great significance in the United States, as it presented a legal theory for those opposed to slavery.

Mansfield was born March 2, 1705, in Scone, Scotland. He was educated at Christ Church, Oxford, and was called to the bar at Lincoln's Inn in 1730. From 1742 to 1754, Mansfield acted as SOLICITOR GENERAL of England, and from 1754 to 1756, he served as attorney general. In 1756 he became chief justice of the King's Bench, and he served on the court until 1788. In recognition of these achievements, he was created first earl of Mansfield.



Mansfield departed from the traditional role of an English judge. He did not seek to formulate law solely on the basis of STARE DECISIS, which relies on the exact holdings of previous decisions. Instead, Mansfield sought to determine general principles inherent in the decisions reached by common-law courts and then to apply those principles to the case at hand. This gave Mansfield great flexibility in responding to new varieties of litigation that came with the development of English commerce. Also, Mansfield educated himself about commercial practices. Because of his growing sensitivity to their interests, members of the English commercial classes were encouraged to bring more of their disputes to his court and to let their affairs be governed by his common-law principles.

I DESIRE NOTHING SO MUCH AS THAT ALL QUESTIONS OF MERCANTILE LAW BE FULLY SETTLED AND ASCERTAINED; AND IT IS OF MUCH MORE CONSEQUENCE THAT THEY SHOULD BE SO, THAN WHICH WAY THE DECISION IS.
—WILLIAM, FIRST EARL OF MANSFIELD

In deciding commercial-law cases, Mansfield adopted the guiding principle of GOOD FAITH, which demanded an adherence to moral obligations. In contract law he believed that the parties' intentions—rather than out-of-date, rigid common-law rules—ought to be used to set the scope of agreements and to settle disputes. In the area of real property, Mansfield tried, against much resistance, to update and modify a species of law that was both archaic and arcane. Throughout his tenure on the bench, Mansfield demonstrated a consistent desire to modernize the law of commerce.

Mansfield's decision in *Somerset's Case* dealt a fatal blow to English slaveholding interests. In this 1772 case, a slave brought to England by his master had escaped and had been recaptured. Antislavery activists demanded his release and sought a writ of HABEAS CORPUS (an order of protection against illegal imprisonment), arguing that England did not have a law permitting slavery. Mansfield ordered that the slave be released, holding that slavery was "so odious, that nothing can be suffered to support it but positive law."

Mansfield did not rule that slavery was always illegal, only that it would take a positive law (an act of Parliament) to legitimate it. Absent a positive law that would recognize the powers of a slave owner over a slave, English courts would not uphold a slaveholder's claim to a slave. This decision was embraced by opponents of U.S. slavery in nonslaveholding states. *Somerset's Case* ultimately shaped the federal system in the United States, making slavery there a product of state, not federal, statutory law. It also permitted runaway slaves in the United States to claim legal protection if they escaped to a nonslaveholding state. Mansfield died March 20, 1793, in London.

MANSLAUGHTER

The unjustifiable, inexcusable, and intentional killing of a human being without deliberation, premeditation, and malice. The unlawful killing of a human being without any deliberation, which may be involuntary, in the commission of a lawful act without due caution and circumspection.

Manslaughter is a distinct crime and is not considered a lesser degree of murder. The essential distinction between the two offenses is that malice aforethought must be present for murder, whereas it must be absent for manslaughter. Manslaughter is not as serious a crime as murder. On the other hand, it is not a justifiable or excusable killing for which little or no punishment is imposed.

At COMMON LAW, as well as under current statutes, the offense can be either voluntary or INVOLUNTARY MANSLAUGHTER. The main difference between the two is that voluntary manslaughter requires an intent to kill or cause serious bodily harm while involuntary manslaughter does not. Premeditation or deliberation, however, are elements of murder and not of manslaughter. Some states have abandoned the use of adjectives to describe different forms of the offense and, instead, simply divide the offense into varying degrees.

Voluntary Manslaughter

In most jurisdictions, voluntary manslaughter consists of an intentional killing that is accompanied by additional circumstances that mitigate, but do not excuse, the killing. The most common type of voluntary manslaughter occurs when a defendant is provoked to commit the HOMICIDE. It is sometimes described as a heat of passion killing. In most cases, the provocation must induce rage or anger in the defendant, although some cases have held that fright, terror, or desperation will suffice.

If adequate provocation is established, a murder charge may be reduced to manslaughter. Generally there are four conditions that must be fulfilled to warrant the reduction: (1) the provocation must cause rage or fear in a reasonable person; (2) the defendant must have

actually been provoked; (3) there should not be a time period between the provocation and the killing within which a reasonable person would cool off; and (4) the defendant should not have cooled off during that period.

Provocation is justifiable if a reasonable person under similar circumstances would be induced to act in the same manner as the defendant. It must be found that the degree of provocation was such that a reasonable person would lose self-control. In actual practice, there is no precise formula for determining reasonableness. It is a matter that is determined by the trier of fact, either the jury or the judge in a nonjury trial, after a full consideration of the evidence.

Certain forms of provocation that frequently arise have traditionally been considered reasonable or unreasonable by the courts. A killing that results from anger that is induced by a violent blow with a fist or weapon might constitute sufficient provocation, provided the accused did not incite the victim. It is not reasonable, however, to respond similarly to a light blow. A killing that results from mutual combat is often considered manslaughter, provided it was caused by the heat of passion aroused by the combat. An illegal arrest of one who knows of or believes in his or her innocence may provoke a reasonable person, although cases are in dispute on the issue of whether such an arrest would justify a killing. An attempt to make a legal arrest in an unlawful manner by the use of unnecessary violence might also constitute a heat of passion killing that will mitigate an intentional killing. Some cases have held that a reasonable belief that one's spouse is committing ADULTERY will suffice. An injury to persons in a close relationship to the accused, such as a spouse, child, or parent, is often held to constitute reasonable provocation, particularly when the injury occurs in the accused person's presence.

Mere words or gestures, although extremely offensive and insulting, have traditionally been viewed as insufficient provocation to reduce murder to manslaughter. There is, however, a modern trend in some courts to hold that words alone will suffice under certain circumstances, such as instances in which a present intent and ability to cause harm is demonstrated.

The reasonable person standard is generally applied in a purely objective manner. Unusual mental or physical characteristics are not taken into consideration. The fact that a defendant was more susceptible to provocation than an average person because he or she had a previous head injury is not relevant to a determination of whether the person's conduct was reasonable. There has, however, been a trend in some cases that indicates a willingness to consider some subjective factors.

If a reasonable period of time passed between the provocation and the killing so that the defendant had sufficient time to cool off, a homicide will not be reduced to manslaughter. Most courts will reduce the charge if a reasonable person would not have cooled off. Some, however, look solely at the defendant's temperament and make a subjective decision as to whether the person had sufficient time to regain self-control.

In some states, there is a case-law trend in which a killing that is committed under a mistaken belief that one is justified constitutes voluntary manslaughter. It is reasoned that although the crime is not justifiable, it is not serious enough to be murder.

It is a general rule that a defendant who acts in SELF-DEFENSE may only use force that is reasonably calculated to prevent harm to himself or herself. If the person honestly, but unreasonably, believes DEADLY FORCE is necessary and, therefore, causes another's death, some courts will consider the crime voluntary manslaughter. Similarly when a defendant acts under an honest but unreasonable belief that he or she has a right to kill another to prevent a felony, some courts will find the person guilty of voluntary manslaughter. Although it is generally considered a crime to kill another in order to save oneself, the justification of coercion or necessity may, likewise, reduce murder to manslaughter in some jurisdictions.

Involuntary Manslaughter

Involuntary manslaughter is the unlawful killing of another human being without intent. The absence of the intent element is the essential difference between voluntary and involuntary manslaughter. Also in most states, involuntary manslaughter does not result from a heat of passion but from an improper use of reasonable care or skill while in the commission of a lawful act or while in the commission of an unlawful act not amounting to a felony.

Generally there are two types of involuntary manslaughter: (1) criminal-negligence manslaughter; and (2) unlawful-act manslaughter. The first occurs when death results from a high degree of NEGLIGENCE or recklessness, and the second occurs when death is caused by one who commits or attempts to commit an unlawful act, usually a misdemeanor.

Although all jurisdictions punish involuntary manslaughter, the statutes vary somewhat. In some states, the criminal negligence type of manslaughter is described as gross negligence or culpable negligence. Others divide the entire offense of manslaughter into degrees, with voluntary manslaughter constituting a more serious offense and carrying a heavier penalty than involuntary manslaughter.

Many statutes do not define the offense or define it vaguely in common-law terms. There are, however, a small number of modern statutes that are more specific. Under one such statute, the offense is defined as the commission of a lawful act without proper caution or requisite skill, in which one unguardedly or undesignedly kills another or the commission of an unlawful act that is not felonious or tends to inflict great bodily harm.

Criminally Negligent Manslaughter A homicide resulting from the taking of an unreasonable and high degree of risk is usually considered criminally negligent manslaughter. Jurisdictions are divided on the question of whether the defendant must be aware of the risk. Modern criminal codes generally require a consciousness of risk, although, under some codes, the absence of this element makes the offense a less serious homicide.

There are numerous cases in which an omission to act or a failure to perform a duty constitutes criminally negligent manslaughter. The existence of a duty is essential. Since the law does not recognize that an ordinary person has a duty to aid or rescue another in distress, an ensuing death from failure to act would not be manslaughter. On the other hand, an omission in which one has a duty, such as the failure of a lifeguard to attempt to save a drowning person, might constitute the offense.

When the failure to act is reckless or negligent, and not intentional, it is usually manslaughter. If the omission is intentional and death is likely or substantially likely to result, the offense might be murder. When an intent to kill, recklessness, and negligence are present, no offense is committed.

In many jurisdictions, death that results from the operation of a vehicle in a criminally negligent manner is punishable as a separate offense. Usually it is considered a less severe crime than involuntary manslaughter. Although criminal negligence is an element, it is generally not the same degree of negligence as that which is required for involuntary manslaughter. For example, some vehicular homicide statutes have been construed to require only ordinary negligence while, in a majority of jurisdictions, a greater degree of negligence is required for involuntary manslaughter.

Unlawful-Act Manslaughter In many states, unlawful-act manslaughter is committed when death results from an act that is likely to cause death or serious physical harm to another person. In a majority of jurisdictions, however, the offense is committed when death occurs during the commission or attempted commission of a misdemeanor.

In some states, a distinction is made between conduct that is *malum in se,* bad in itself and conduct that is *malum prohibitum,* bad because prohibited by law. In these states, the act that causes the death must be *malum in se* and a felony in order for the offense to constitute manslaughter. If the act is *malum prohibitum,* there is no manslaughter unless it was foreseeable that death would be a direct result of the act. In other states that similarly divide the offense, the crime is committed even though the act was *malum prohibitum* and a misdemeanor, especially if the unlawful act was in violation of a statute that was intended to prevent injury to other persons.

Punishment

The penalty for manslaughter is imprisonment. The precise term of years depends upon the applicable statute. Usually the sentence that is imposed for voluntary manslaughter is greater than that given for involuntary manslaughter. In most states, a more serious penalty is imposed for criminally negligent manslaughter than for unlawful-act manslaughter.

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CROSS REFERENCE

Deadly Force.

MANUFACTURES

Items of trade that have been transformed from raw materials, either by labor, art, skill, or machine into finished articles that have new forms, qualities, or properties.

For example, a blouse that is made of raw silk would be considered a manufacture, whereas fresh vegetables sold on a farm would not.

Whether particular products are within the definition of manufactures becomes significant with respect to taxes and other regulations imposed upon manufacturers.

MAPP V. OHIO

A landmark Supreme Court decision, *Mapp v. Ohio,* 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961), established the rule that evidence that has been obtained by an illegal SEARCH AND SEIZURE cannot be used to prove the guilt of a defendant at a state criminal trial.

Police officers went to the home of Dollree Mapp in an attempt to find someone who was wanted for questioning about a recent bombing. When they demanded entrance to the house, Mapp called her attorney and refused to allow the police to enter without a SEARCH WARRANT. Subsequently the police officers became rough with Mapp and handcuffed her. Upon a search of the house, they found obscene books, pictures, and photographs for the possession of which the defendant was subsequently prosecuted and convicted.

The defendant brought an unsuccessful action challenging the constitutionality of the search. An appeal was made to the Ohio Supreme Court, which affirmed the judgment. The defendant appealed to the U.S. Supreme Court, which reversed the decision on the ground that evidence obtained by an unconstitutional seizure was inadmissible.

The Court was extremely critical of the actions of the police and held that the defendant's privacy had been unconstitutionally invaded. The police tactics were deemed comparable to a confession forced out of a fearful prisoner. The Court ruled that to compel respect for the constitutional right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, it was necessary to exclude illegally obtained evidence from the consideration of the trial court.

The Supreme Court had ruled, as early as 1886, that any illegally obtained evidence could not be introduced in federal courts. This principle, known as the EXCLUSIONARY RULE, was initially applied to state criminal prosecutions in *Mapp.* The Court made note of the fact that, in other instances, various states had attempted to prevent illegal police searches by other means, but the exclusionary rule is, in the opinion of the Supreme Court, the only effective means of protecting citizens from illegal searches conducted by government agents.

CROSS REFERENCE

Criminal Procedure.

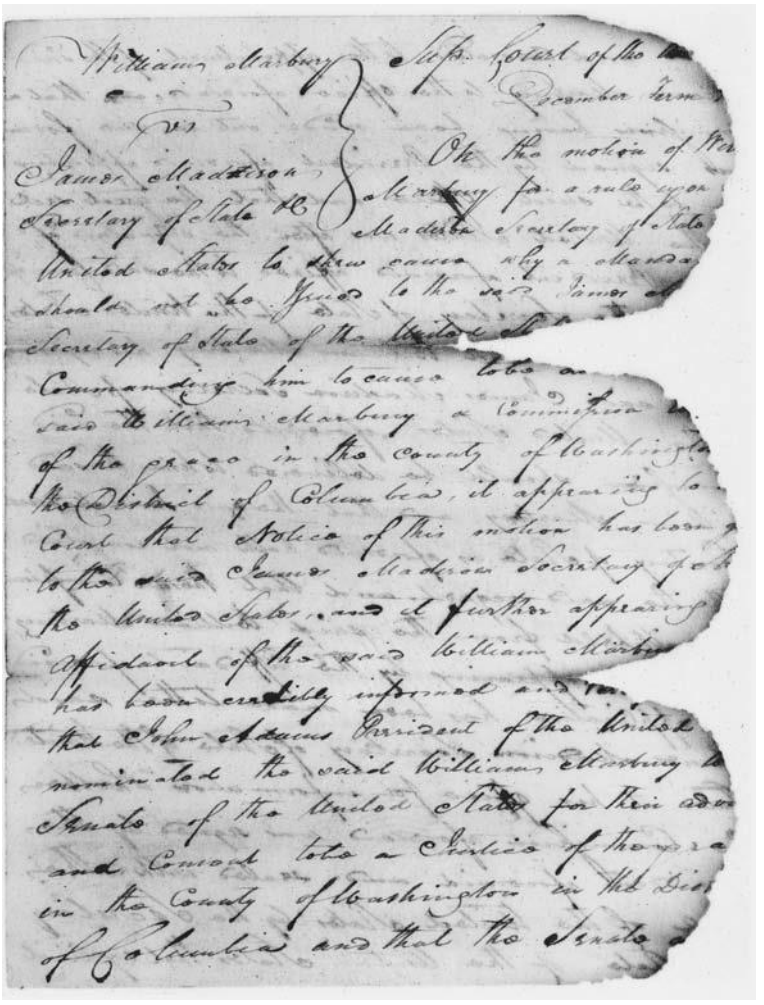
MARBURY V. MADISON

Marbury v. Madison, 5 U.S. (1 Cranch) 137, 2 L. Ed. 60 (1803), established the power of JUDICIAL REVIEW in the U.S. Supreme Court. This power, which was later extended to all federal courts, authorizes the federal judiciary to review laws enacted by Congress and the president and to invalidate those that violate the Constitution.

The power of judicial review also permits federal courts to compel government officials to take action in accordance with constitutional principles, as the Supreme Court did when it ordered President RICHARD M. NIXON to release tapes he had made of conversations at the White House regarding a series of scandals that began with the BURGLARY of the Democratic party's national headquarters in the Watergate office complex in June 1972. Finally, judicial review empowers federal courts to decide legal issues raised by state constitutions, statutes, and common-law decisions that touch upon a federal constitutional provision.

Judicial review is also routinely exercised by state courts over state and federal constitutional questions. Unlike the federal power of judicial review, which derives from *Marbury,* the state power of judicial review usually derives from an express provision in a state constitution.

Marbury was an outgrowth of political struggles between the Federalist and Republican parties during the late eighteenth and early



The show-cause order served on James Madison was damaged in the Capital fire of 1898.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

nineteenth centuries in the United States. These struggles began as a dispute between the Federalists and Anti-Federalists over the ratification of the Constitution.

The Federalists, including ALEXANDER HAMILTON and JOHN JAY, supported ratification of the Constitution as a means of creating a stronger national government that would replace the feeble central government formed under the ARTICLES OF CONFEDERATION. The Federalists believed that a strong national government was necessary to promote economic growth and geographic expansion and to protect U.S. citizens from internal and external aggression. The Anti-Federalists, including GEORGE MASON and PATRICK HENRY, opposed ratification because they feared it would create a despotic national government that would vitiate state sovereignty and be unresponsive to local interests.

After the Constitution was ratified by the states, many disgruntled Anti-Federalists joined the REPUBLICAN PARTY. Like their Anti-Federalist predecessors, the Republicans worked to curtail further growth of the national government, drawing their constituency from farmers and mechanics. The Federalists, meanwhile, sought an increased role for the national government, including the establishment of a federal bank, and drew their constituency from wealthy property owners and mercantilists.

During the administration of JOHN ADAMS (1797–1801), Federalists controlled the executive and legislative branches of the federal government and permeated the federal judiciary as well. However, the political tides turned against the Federalists during the elections of 1800, when the Republicans wrested control of both houses of Congress and THOMAS JEFFERSON, their party leader, was elected president. Determined not to lose all its influence over the national government, the lame-duck Federalist Congress passed legislation that created a host of new federal judgeships and called for the appointment of 42 justices of the peace in the District of Columbia.

In the haste of filling these vacancies during the waning hours of his last night in office, President Adams neglected to deliver the commissions (warrants issued by the government authorizing a person to perform certain acts) of several appointees. One of the so-called midnight appointees who did not receive his commission was William Marbury. After Jefferson ordered Secretary of State JAMES MADISON to withhold Marbury's commission, Marbury petitioned the Supreme Court for a writ of MANDAMUS (a court order requiring an official to perform his duties) to compel Madison to deliver the commission.

The case was heard before Chief Justice JOHN MARSHALL and four associate justices. Marshall was one of the "midnight judges" President Adams had appointed to the federal bench during his last few months in office. Prior to his appointment to the Supreme Court, Marshall had served as secretary of state for the Adams administration. Ironically, it was Marshall who, serving in a dual capacity as the secretary of state and chief justice, had failed to deliver the commission to Marbury. None of these facts presented a sufficient conflict of interest for Marshall to disqualify himself from hearing the dispute.

Marshall's opinion, written for a unanimous Court, was divided into five parts, the first three being the least controversial. First, the Court

held that Marbury had a legal right to serve as JUSTICE OF THE PEACE and was entitled to receive the commission memorializing that right. Marbury had been nominated for the office by the president and confirmed by the Senate, in accordance with the procedures set forth in the Constitution. When President Adams signed the commission and affixed the seal of the United States to it, the appointment was "complet[e]." Delivery of the commission was a mere "convenience" that did not interfere with Marbury's legal right.

Second, the Court ruled it was a "plain violation" of this right for Madison to withhold the commission. When a commission has been signed and sealed by the EXECUTIVE BRANCH following a nominee's appointment and confirmation, the secretary of state, Marshall said, has a "duty" to "conform to the law" and deliver it as part of his "ministerial" responsibilities.

Third, the Marshall opinion said a writ of mandamus was the proper remedy because mandamus is a "command" directing "any person, corporation or inferior court of judicature ... to do some particular thing ... which appertains to their office and duty."

Marshall's opinion next addressed the question of whether the Supreme Court had the power to issue Marbury the writ. This question turned on the Court's jurisdiction. Article III of the U.S. Constitution confers upon the Supreme Court two types of jurisdiction: original and appellate. Original jurisdiction gives courts the power to hear lawsuits from their inception, when a complaint or petition is "originally" filed with the tribunal. Appellate jurisdiction gives courts the power to review decisions that were made by lower courts and have been "appealed" in order to reverse a purported error. Under Article III, the Supreme Court has original jurisdiction over politically sensitive disputes such as those "affecting ambassadors" or those in which one of the 50 states is named as a party. In all other cases, the Supreme Court retains appellate jurisdiction.

In petitioning the Supreme Court directly for a writ of mandamus, Marbury was asking the Court to invoke its original jurisdiction pursuant to section 13 of the JUDICIARY ACT OF 1789, which authorized all federal courts to issue such writs "in cases warranted by the principles and usages of law." Yet Marbury was not an ambassador or state government entitled to have the Supreme Court hear the case under its original jurisdiction. As a consequence, Marshall opined that section 13 impermissibly attempted to enlarge the Supreme Court's original jurisdiction to include disputes such as those presented by *Marbury v. Madison*, in contravention of the constitutional limitations placed on that jurisdiction by Article III.

However, Marshall suggested that merely because a piece of legislation violates a constitutional principle does not necessarily mean that the legislation is unenforceable. "[W]hether an act repugnant to the constitution can become law of the land," Marshall noted, "is a question deeply interesting to the United States." Observing that the Constitution expressly delegates and limits the powers of Congress, Marshall asked, "To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained?"

Marshall argued that the "distinction between a government with limited and unlimited powers is abolished if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation." Marshall continued:

> It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act Between these alternatives there is no middle ground. The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it .. . . If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

For Marshall, the idea that an unconstitutional act of legislature could "bind the courts and oblige them to give it effect" was "an absurdity too gross to be insisted on." Thus, Marshall concluded that congressional legislation contrary to the federal Constitution is null and void and cannot be enforced by a court of law.

Having ruled that the Judiciary Act of 1789 was invalid and unenforceable, Marshall next asked whether the judiciary was the appropriate

branch to be vested with authority to overturn unconstitutional legislation. Although it is commonly accepted in the early 2000s that the power to nullify state and federal statutes falls within the purview of the judicial branch of government, the Constitution does not specifically delegate this power to any one branch. Under the explicit provisions of the Constitution, then, the executive and legislative branches might have argued in 1803 that they were no less entitled than the judicial branch to be entrusted with the power of judicial review.

The Court rejected this idea:

> It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each. So if a law be in opposition to the constitution: if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law: the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

Marshall was arguing that it was the historical role of courts to settle legal disputes by interpreting and applying the law. In some instances, the applicable statutory or COMMON LAW has conflicted with other laws, Marshall said, and it has been the obligation of courts to resolve "the operation of each."

Earlier in his opinion, the chief justice had described the federal Constitution as a special kind of law that was "paramount" to all other laws in the United States. It then followed, the chief justice reasoned, that courts carried the responsibility to interpret and apply the Constitution's provisions. This responsibility inevitably entailed review of cases where laws passed by the legislative and executive branches conflicted with the strictures of the Constitution. By resolving such conflicts, Marshall maintained, courts were doing nothing more than fulfilling their traditional role of settling legal disputes.

Marshall also questioned whether members of the legislative and executive branches could objectively evaluate the constitutionality of legislation they passed. It is sometimes said that a diner, not the cook, is the best judge of a meal. Following the same reasoning, Marshall hinted that the legislative and executive branches could not impartially review legislation that they had helped prepare or enact. It is far from clear, for example, whether the Federalists in Congress who supported the Judiciary Act of 1789 could have put aside their partisan views long enough to exercise the power of judicial review over the *Marbury* dispute in a fair and neutral manner.

Chief Justice Marshall's opinion in *Marbury* has been the object of much criticism. Constitutional historians claim that *Marbury* represents a paradigm of judicial activism, which is marked by judges who decide cases based on issues not argued before them. This criticism seems to be particularly apt when applied to *Marbury* because, as constitutional scholar Leonard W. Levy has pointed out, "[In] no other case in our constitutional history has the Court held unconstitutional an act of Congress whose constitutionality was not at issue." Neither Marbury nor Madison had attacked the constitutionality of the Judiciary Act.

Against this criticism, historians have weighed the dilemma confronting Chief Justice Marshall. As a Federalist appointed to the Supreme Court, Marshall attempted to facilitate the growth of the national government through his judicial opinions. To achieve this end, Marshall aspired to establish the Constitution as the supreme law of the land, under which the executive, legislative, and judicial branches of both state and federal governments would be subordinate. He also hoped to establish the Supreme Court as the ultimate arbiter of the Constitution, providing the final word on the meaning and application of any constitutional principles.

Marshall realized that none of these aspirations would be realized unless the Supreme Court gained respect and acceptance from Congress and the president. After all, the Supreme Court depended on the executive branch to enforce its decisions. President ANDREW JACKSON once underscored this point when he exclaimed, "John Marshall has made his decision [in *Worcester v. Georgia,* 31 U.S. (6 Pet.) 515, 8 L. Ed. 483 (1832)], now let him enforce it!" (as quoted in *Coleman v. United States Bureau of Indian Affairs,* 715 F.2d 1156 [7th Cir. 1983]).

Marshall also needed to curry the favor of Congress, which possessed the power to limit the appellate jurisdiction of the Supreme Court

under Article III, Section 2, of the Constitution. In addition, Congress possessed the power to impeach the Supreme Court justices, a power that it unsuccessfully exercised in 1805 when the Senate acquitted Federalist justice SAMUEL CHASE of wrongdoing.

Marbury was the powder keg threatening to upset the delicate relationships between the coordinate branches of the federal government. Marshall understood that on the one hand, if the Court ordered Madison to deliver the commission to Marbury, the Jefferson administration might ignore the order and tarnish the Court's reputation by exposing it as an impotent institution. On the other hand, if the Court ruled in favor of Madison, Marbury and the Federalists who had appointed and confirmed him would suffer a humiliating defeat. In either instance, the executive branch would be perceived as preeminent.

The chief justice's solution to this dilemma was what one constitutional scholar has called a "masterwork of indirection, a brilliant example of Marshall's capacity to sidestep danger while seeming to court it, to advance in one direction while his opponents are looking in another" (McCloskey 1960, 40). Marshall's opinion in *Marbury* denied a Lilliputian power to the Supreme Court with one hand, while grabbing a titanic power for the judicial branch with the other.

By rejecting Marbury's claim on the ground that the Supreme Court did not have original jurisdiction to issue the writ of mandamus under the Constitution, Marshall established the power of judicial review in the nation's highest court. While appeasing the Jeffersonian Republicans with a victory over President Adams in the battle over the president's midnight appointments, Marshall introduced the idea that the federal Constitution is the fundamental law underlying both the state and federal governments. In striking down a section of the Federalist-supported Judiciary Act, Marshall identified the Supreme Court as the authoritative interpreter of the Constitution.

Each of these accomplishments set the stage for a gradual accretion of power, respect, and prestige in the federal judiciary. As the power of the federal judiciary increased, so did the power of the entire federal government, something that proved important in President Abraham Lincoln's efforts to preserve the Union during the Civil War.

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CROSS REFERENCES

Congress of the United States; Constitution of the United States; Judicial Review; "Marbury v. Madison" (Appendix, Primary Document); Separation of Powers; Supreme Court of the United States.

MARGIN

The edge or border; the edge of a body of water where it meets the land. As applied to a boundary line of land, the margin of a river, creek, or other watercourse means the center of the stream. But in the case of a lake, bay, or natural pond, the margin means the line where land and water meet.

In finance, the difference between market value of loan collateral and face value of loan.

A sum of money, or its equivalent, placed in the hands of a BROKER *by the principal or person on whose account a purchase or sale of* SECURITIES *is to be made, as a security to the former against losses to which he or she may be exposed by subsequent fluctuations in the market value of the stock. The amount paid by the customer when he uses a broker's credit to buy a security.*

In commercial transactions the difference between the purchase price paid by an intermediary or retailer and the selling price, or difference between price received by manufacturer for its goods and costs to produce. Also called gross profit margin.

MARGIN CALL

A demand by a BROKER *that an investor who has purchased* SECURITIES *using credit extended by the broker (on margin) pay additional cash into his or her brokerage account to reduce the amount of debt owed.*

A broker makes a margin call when the stocks in the account of the client have fallen below a particular percentage of their market price at the time of purchase, thereby increasing the outstanding debt and the broker's liability should the client become unable to pay. This process is also known as remargining.

A broker might also make a margin call when a client desires to make additional purchases of stock and securities.

TO PERMIT PUBLIC OFFICERS TO DETERMINE WHETHER THE VIEWS OF INDIVIDUALS SINCERELY HELD AND THEIR ACTS SINCERELY UNDERTAKEN ON RELIGIOUS GROUNDS ARE IN FACT BASED ON CONVICTION RELIGIOUS IN CHARACTER WOULD BE TO SOUND THE DEATH KNELL OF RELIGIOUS LIBERTY.
—ALBERT MARIS

v MARIS, ALBERT BRANSON

Albert Branson Maris, a federal judge for 50 years, brought his quiet, scholarly leadership to the 1947 and 1948 recodifications of the U.S. Criminal and Judicial Codes. Because of his ongoing commitment to the revision and modernization of civil, criminal, BANKRUPTCY, and judicial codes, Maris is often called the father of modernized judicial procedure in the United States. He not only helped to shape federal JURISPRUDENCE in this country but also was instrumental in the development of the laws and judicial systems of Guam and the U.S. Virgin Islands.

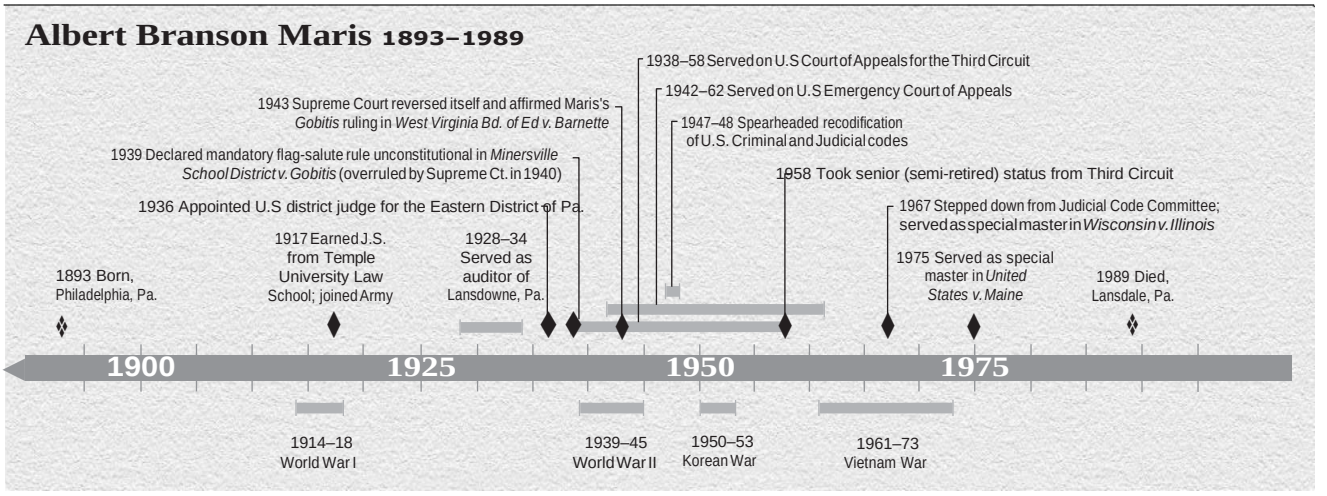
Maris was born in Philadelphia on December 19, 1893. Descendants of Quaker colonists, Maris and his family were also members of the Society of Friends. Maris studied at the Friends Select School, and later the Westtown School, attended by his father and grandfather.

Mindful of his responsibility to his widowed mother and younger siblings, Maris made no plans to attend college after graduating from Westtown. He enrolled in a business course offered by a Scranton, Pennsylvania, correspondence school and entered the workforce as a clerk for an insurance company. He then took night courses at Temple University, passed the college entrance exam, and went on to study law.

Maris received his law degree from Temple University Law School—and married Edith Robinson on the same day—in 1917. The escalation of WORLD WAR I delayed the PRACTICE OF LAW for Maris. He served in an Army artillery unit as an enlisted man and later became an officer.

After the war, Maris entered private practice near Philadelphia. He also returned to school and earned a diploma from Drexel University Engineering School in 1926. He served as auditor of the borough of Lansdowne, Pennsylvania, from 1928 to 1934 and as councilman of the borough of Yeadon, Pennsylvania, from 1935 to 1936. After 18 years of private practice and community service, Maris was appointed U.S. district judge for the Eastern District of Pennsylvania by President FRANKLIN D. ROOSEVELT on June 22, 1936. Two years later, he was elevated to the U.S. Court of Appeals for the Third Circuit, which handles appeals of federal cases from Pennsylvania, New Jersey, Delaware, and the Virgin Islands.

Maris's decisions were rarely appealed and almost never overturned. *Minersville School District v. Gobitis,* 108 F.2d 683 (3d Cir. 1939), was among the few cases in which his ruling was challenged. In 1938, the children of William Gobitis and Lily Gobitis were expelled from



school for refusing, on religious grounds, to recite the Pledge of Allegiance. The Gobitises filed a lawsuit in federal court, claiming that local regulations enforcing recitation of the pledge violated their FIRST AMENDMENT rights. Maris declared the school district's regulations unconstitutional. But when the case was appealed to the Supreme Court, the justices overruled Maris by an 8–1 vote. An opportunity to challenge the *Gobitis* ruling eventually made its way through the courts when two sisters faced a similar issue in West Virginia (*West Virginia State Board of Education v. Barnette,* 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 [1943]). When that case reached the Supreme Court, two justices who had participated in the *Gobitis* decision were now retired. With two new justices, the High Court reversed itself, ruling as Maris had in the *Gobitis* case.

In addition to his Third Circuit duties, Maris served on the TEMPORARY EMERGENCY COURT OF APPEALS during WORLD WAR II and the postwar years. (This court decided cases throughout the United States that arose from temporary legislation enacted by Congress to facilitate the war effort.) Maris served the temporary court as needed for the next twenty years and eventually became its chief judge. His work on this court broadened his interest in the crafting of legislation and the CODIFICATION of laws. This interest led to an appointment as chairman of the U.S. Judicial Conference Committee on Revision of the Laws in 1944.

His committee spearheaded the much-needed recodifications of the U.S. Criminal and Judicial Codes in 1947 and 1948. As committee chairman, he oversaw the ongoing revision and modernization of civil, criminal, bankruptcy, and appellate rules of procedure until 1967, when he stepped down. Even the modest Maris admitted that the adoption of his committee's work in 1947 and 1948 was a milestone in the improvement of JUDICIAL ADMINISTRATION.

In the early 1950s Maris began to cultivate an interest in INTERNATIONAL LAW. Shortly after World War II, the U.S. INTERIOR DEPARTMENT asked Maris to study the legal and judicial systems of the islands and trust territories of the South Pacific. He did, and he made recommendations that were well received at home and abroad. Throughout the 1950s, he worked tirelessly with the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa to draft and enact legislation creating and revising their court systems and procedures. In conjunction with his international work, he served as a member of the U.S. Advisory Committee on International Rules of Judicial Procedure from 1959 to 1963, and as a member of the Advisory Committee to the SECRETARY OF STATE on Private International Law from 1964 to 1967.

Maris took senior (or semiretired) status on December 31, 1958. As a senior judge, he served as SPECIAL MASTER under appointment of the U.S. Supreme Court in a number of significant and complex cases—including land and water claims cases between states and between states and the federal government (see, e.g., *Wisconsin v. Illinois,* 388 U.S. 426, 87 S. Ct. 1774, 18 L. Ed. 2d 1290 [1967]; *United States v. Maine,* 420 U.S. 515, 95 S. Ct. 1155, 43 L. Ed. 2d 363 [1975]). He continued to hear and rule on almost one hundred cases per year for the next 25 years. Maris died on February 7, 1989, in Lansdale, Pennsylvania.

MARITAL

Pertaining to the relationship of HUSBAND AND WIFE*; having to do with marriage.*

Marital agreements are contracts that are entered into by individuals who are about to be married, are already married, or are in the process of ending a marriage. They ordinarily govern the division and ownership of marital property.

MARITAL COMMUNICATIONS PRIVILEGE

The right given to a HUSBAND AND WIFE *to refuse to testify in a trial as to confidential statements made to each other within and during the framework of their spousal relationship.*

The marital communications privilege is a right that only legally married persons have in court. Also called the husband-wife privilege, it protects the privacy of communications between spouses. The privilege allows them to refuse to testify about a conversation or a letter that they have privately exchanged as marital partners.

The marital privilege is an exception to the general rule that all relevant evidence is admissible at trial. Similar privileges exist for communications between priest and penitent (one who has confided in the priest), attorney and client, and doctor and patient. Privileges exclude evidence from trial in order to advance some social goal. With the marital privilege, the

goal of free and open communication between spouses, which is believed to strengthen and further the marital relationship, is given greater weight than the need for evidence (the information exchanged by the spouses) to resolve a legal dispute.

The marital communications privilege originated at COMMON LAW. It was made formal in the English Evidence Amendment Act of 1853, which said that neither husbands nor wives could be forced to disclose any communication made to the other during the marriage. In the United States, the privilege came to be recognized in state and FEDERAL RULES OF EVIDENCE. By the twentieth century, the U.S. Supreme Court said that it was "regarded as so essential to the preservation of the marriage relationship as to outweigh the disadvantages to the administration of justice" (*Wolfle v. United States,* 291 U.S. 7, 54 S. Ct. 279, 78 L. Ed. 617 [1934]).

The marital communications privilege is available in most jurisdictions. Most jurisdictions offering it allow a witness spouse to choose whether to testify; some automatically disqualify evidence from a spouse.

The privilege is not absolute. Because its effect is to deny evidence at trial, courts generally interpret it narrowly.

The most important condition for its use is a legal marriage. Courts will not permit its use by partners who merely live together or by those who have a COMMON-LAW MARRIAGE or a sham, or false, marriage. Moreover, the communication must have taken place while the marriage existed, not after a DIVORCE. Generally, the determination of whether a marriage is legal depends on state law.

The privilege also cannot be claimed in certain situations, such as where one spouse is subject to prosecution for crimes committed against the other or against the children of the couple. In addition, the presence of third persons at the time of the communication usually eliminates confidentiality and thus destroys the privilege, although courts have granted exceptions for the presence of children.

Many jurisdictions make the distinction of which spouse "holds," and may therefore assert, the privilege—the defendant spouse or the witness spouse. In these jurisdictions, the spouse who holds the privilege may waive it and testify against the other spouse.

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CROSS REFERENCES

Attorney-Client Privilege; Privileged Communication; Testimony.

MARITIME LIEN

The right of a particular individual to compel the sale of a ship because he or she has not been paid a debt owed to him or her on account of such vessel.

A maritime lien is designed to furnish security to a creditor and to enable a person to obtain repairs and supplies even in the event that the ship is a distance away from its owners and no significant amount of money is on board to pay for the goods and services that are provided.

Maritime liens are distinguishable from a majority of other types of liens since the creditor need not retain possession of the boat before asserting a claim. They can exist only on movable objects that bear some relationship to navigation or commerce on NAVIGABLE WATERS: for example, every part of a vessel, such as the hull, engine and tackle; as well as flatboats, lighters, scows, and dredges used to deepen harbors and channels. Controversy exists concerning whether a maritime lien can attach to a raft; however, courts have not recognized maritime liens for repairs done on a seaplane while it is in a hangar on dry land or for bridges, dry docks, wharves, or floating structures permanently moored to shore, such as barges that are used for restaurants.

The amount of a maritime lien equals the reasonable value of services that are performed in maintaining the ship, coupled with supplies that are furnished plus interest, less any set-off for claims the ship has against the lienholders. The amount ordinarily arises out of a contract; however, a maritime lien can also be created for damages that are attributable to injuries that are caused by the ship.

An individual who is entitled to a maritime lien may forfeit his or her right if he or she delays in enforcing it or does something inconsistent with the lien. Allowing the ship to depart does not affect the lien; however, the complete destruction of a vessel extinguishes it.

A lienholder must sue in federal court in order to enforce a maritime lien, and anyone holding a lien against the ship can intervene in the action.The court may order a sale of the ship and its cargo and distribute the proceeds to those who establish a valid claim against the ship. Where there are insufficient funds to satisfy every claim, the court determines which liens have priority, and the percentage of recovery that each claimant is entitled to collect.

CROSS REFERENCES

Intervention; Admiralty and Maritime Law.

MARKET VALUE

The highest price a willing buyer would pay and a willing seller would accept, both being fully informed, and the property being exposed for sale for a reasonable period of time. The market value may be different from the price a property can actually be sold for at a given time (market price). The market value of an article or piece of property is the price that it might be expected to bring if offered for sale in a fair market; not the price that might be obtained on a sale at public auction or a sale forced by the necessities of the owner, but such a price as would be fixed by negotiation and mutual agreement, after ample time to find a purchaser, as between a vendor who is willing (but not compelled) to sell and a purchaser who desires to buy but is not compelled to take the particular article or piece of property.

MARKETABLE TITLE

Ownership and possession of real property that is readily transferable because it is free from valid claims by outside parties.

The concept of marketability of title refers to ownership of real estate. Under law, titles are evidence of ownership. Selling real estate (land and the property attached to it) involves transferring its title. A marketable title is one that can be transferred to a new owner without the likelihood that claims will be made on it by another party. The concept is crucial in all real estate transactions because buyers generally expect to receive property to which no one else can lay claim; they do not expect that their ownership will later be challenged. Marketability of title is addressed in the contract for sale. Unless a contract for sale specifies that a third party has claims on the real estate, there is an implied provision that the seller has a good or marketable title, which the buyer will receive.

However, some real estate that is for sale will have outside claims against it. These claims are known as clouds and encumbrances. For instance, the owner of the title may have outstanding debts or owe interest that has resulted in a lien being placed on the property. The lien gives the owner's creditor a qualified legal right to the property in question, which remains in effect until the debt is settled. Because liens are long-lived (they can remain in force across generations), many states have tried to simplify land transactions by adopting marketable title acts. Generally, these laws limit the duration of a lien to a period of years during which the lien holder must take some action to satisfy the lien, or it is extinguished. Typically these laws apply to liens in existence at the time of the law's creation, as well as to future liens.

Ordinarily, contracts for the sale of real estate provide a remedy for a buyer who later discovers that the title is not marketable. If the seller has failed to provide marketable title, the buyer is permitted to rescind the sale—that is, to back out of the contract and receive a refund of the money paid for the property. Suppose, for example, that Mary buys land from Bob. The contract of sale declares that Bob holds marketable title to the land. After paying Bob, Mary receives a letter from an attorney saying that a business called Lou's Used Cars holds a lien on the property because Bob is using it as collateral for a car loan. In this case Bob has failed to provide Mary with marketable title. He will soon be hearing from her attorney, who will say that Mary is rescinding and wants her money back.

CROSS REFERENCES

Cloud on Title; Real Property; Title Insurance; Title Search.

MARQUE AND REPRISAL

A commission by which the head of a government authorizes a private ship to capture enemy vessels.

The authority to do such capturing is granted to private vessels in letters of marque and reprisal. In the technical sense, a *letter of marque* is permission to cross over the frontier into another country's territory in order to take a ship; a *letter of reprisal* authorizes taking the captured vessel to the home port of the capturer.

Because letters of marque and REPRISAL allowed privately owned and operated vessels to carry out acts of war, the practice came to be known as *privateering.* Privateering was frequently encouraged from the period between 1692 to 1814, at which time weaker countries used privateers to hurt a stronger country in the way guerrilla warfare is currently used. Privateers operated concomitant to regular navies. Their main purpose was to annoy the enemy; however, an enemy's merchant vessels were often seized in retaliation for acts of hostility.

The system of privateering was subject to extensive abuses. In the absence of proper letters, a privateer was tantamount to a pirate. PIRACY is subject to severe punishment throughout the world. Although privateers allegedly existed in order to support the defense of their sovereigns, they frequently acquired much personal wealth through their activities. In addition, since privateers were not subject to the same discipline as a regular navy, they yielded to the temptation to seize ships beyond the scope of their authority.

Such abuses, and new theories of naval warfare led civilized nations, in 1856, to sign an agreement outlawing privateering. The agreement does not prohibit a state from organizing a voluntary navy of private vessels, which are under the dominion and control of the state.

The U.S. Constitution provides that no state can grant letters of marque and reprisal. The federal government is not limited in this right by the Constitution; however, modern custom and treaties prevent it from granting the letters.

CROSS REFERENCE

Admiralty and Maritime Law.

MARRIAGE

Marriage is the legal status, condition, or relationship that results from a contract by which one man and one woman, one man and one man, or one woman and one woman, who have the capacity to enter into such an agreement, mutually promise to live together in the relationship of husband and wife in law for life, or until the legal termination of the relationship.

Marriage is a legally sanctioned contract between two persons. Traditionally, marriage has been between a man and a woman, but several U.S. court and legislative decisions from 2003 onward have authorized same-sex couples to acquire this legal status. Entering into a marriage contract changes the legal status of both parties, giving HUSBAND AND WIFE new rights and obligations. PUBLIC POLICY is strongly in favor of marriage based on the belief that it preserves the family unit. Traditionally, marriage has been viewed as vital to the preservation of morals and civilization.

The traditional principle upon which the institution of marriage is founded is that a husband has the obligation to support a wife and that a wife has the duty to serve. In the past, this arrangement has meant that the husband has the duty to provide a safe house, to pay for necessities such as food and clothing, and to live in the house. A wife's obligation has traditionally entailed maintaining a home, living in the home, having sexual relations with her husband, and rearing the couple's children. Changes in society have modified these marital roles considerably as married women have joined the workforce in large numbers, and more married men have become more involved in child rearing.

Individuals who seek to alter marital rights and duties are permitted to do so only within legally prescribed limits. Antenuptial agreements are entered into before marriage, in contemplation of the marriage relationship. Typically these agreements involve property rights and the terms that will be in force if a couple's marriage ends in DIVORCE. Separation agreements are entered into during the marriage prior to the commencement of an action for a separation or divorce. These agreements are concerned with CHILD SUPPORT, visitation, and temporary maintenance of a spouse. The laws governing these agreements are generally concerned with protecting every marriage for social reasons, whether the parties desire it or not. Experts suggest that couples should try to resolve their own difficulties because that is more efficient and effective than placing their issues before the courts.

In the United States, marriage is regulated by the states. At one time, most states recognized common law marriage, which is entered into by agreement of the parties to be husband and wife. In such an arrangement, no marriage license is required, nor is a wedding ceremony necessary. The parties are legally married when they agree to marry and subsequently live together, publicly holding themselves out as husband and wife. The public policy behind the

Marriage License Application

Your marriage record is vital.
Be sure the information you give is complete and accurate.
PLEASE PRINT- USE BLACK INK

MARRIAGE LICENSE APPLICATION
TO BE FILLED OUT BY COUPLE MAKING APPLICATION
(Please read instructions on reverse side of this form)

STATE OF HAWAI'I • DEPARTMENT OF HEALTH
OFFICE OF HEALTH STATUS MONITORING
LICENSE NO. _____

GROOM (MALE)	1a. FIRST NAME OF GROOM b. MIDDLE NAME c. LAST NAME				2. DATE OF BIRTH (Month, Day, Year)
	3. USUAL RESIDENCE: a. STREET ADDRESS	CITY	b. COUNTY	c. STATE OR FOREIGN COUNTRY	4. PLACE OF BIRTH: *City & State or Country
Zip Code _____	5. FATHER: a. FULL NAME - FIRST, MIDDLE, LAST			b. STATE OR FOREIGN COUNTRY OF BIRTH*	c. Living?* Yes, No, Refused, or Unknown
Home Ph.# _____	6. MOTHER: a. FULL NAME - FIRST, MIDDLE, MAIDEN NAME			b. STATE OR FOREIGN COUNTRY OF BIRTH*	c. Living?* Yes, No, Refused, or Unknown
Office Ph.# _____					
BRIDE (FEMALE)	7a. FIRST NAME OF BRIDE b. MIDDLE NAME c. LAST NAME				8. DATE OF BIRTH (Month, Day, Year)
	9. USUAL RESIDENCE: a. STREET ADDRESS	CITY	b. COUNTY	c. STATE OR FOREIGN COUNTRY	10. PLACE OF BIRTH: *City & State or Country
Zip Code _____	11. FATHER: a. FULL NAME- FIRST, MIDDLE, LAST			b. STATE OR FOREIGN COUNTRY OF BIRTH*	c. Living?* Yes, No, Refused, or Unknown
Home Ph.# _____	12. MOTHER: a. FULL NAME- FIRST, MIDDLE, MAIDEN NAME			b. STATE OR FOREIGN COUNTRY OF BIRTH*	c. Living?* Yes, No, Refused or Unknown
Office Ph.# _____					

Blood relationship of groom to bride:	**On what island do you plan to be married?** (Oahu, Hawai'i, Maui, Kaua'i Lana'i or Moloka'i)	**When do you plan to be married?**	**Name of Marriage Performer** (Commissioned by the State of Hawai'i)
FORWARDING ADDRESS: (After Marriage)			**DO YOU WANT YOUR NAMES** ☐ ☐ **PUBLISHED IN THE NEWSPAPER? YES NO**

CONFIDENTIAL INFORMATION - PLEASE COMPLETE

SUPPLE-MENTARY DATA	NUMBER OF THIS MARRIAGE	IF PREVIOUSLY MARRIED, LAST MARRIAGE ENDED.			RACE*	OCCUPATION*	EDUCATION* - Specify Highest Grade Completed	
	FIRST, SECOND, ETC. (SPECIFY)	BY DEATH, DIVORCE, DISSOLUTION OR ANNULMENT (specify)	DATE ENDED MONTH/YEAR	PLACE ENDED (COUNTY & STATE OR COUNTRY)			Elem. Or Secondary (0-12)	College (1 - 5+)
GROOM (MALE)	25.	26a.	26b.	26c.	27.	28.	29.	
BRIDE (FEMALE)	30.	31a.	31b.	31c.	32.	33.	34.	

FOR OFFICE USE ONLY

GROOM:	BRIDE:
SIGHTED: _____	_____
#: _____	_____
NAME ✓ Yes No	Yes No
DOB ✓? Yes No	Yes No
AGE: ____ Sex: M F	_____ M F
Previous Marriage(s):	
_____	_____
_____	_____
_____	_____

CERTIFICATION - SIGN BEFORE MARRIAGE AGENT

We, the undersigned, certify that the information given in this application is true and correct to the best of our knowledge and belief. Written consent of court is attached, if under jurisdiction of court or under age 16.

FULL SIGNATURE OF PROSPECTIVE **GROOM** (MALE)

FULL SIGNATURE OF PROSPECTIVE **BRIDE** (FEMALE)

Sworn and subscribed to before me this _____ day of _____, 20 _____

MARRIAGE LICENSE AGENT

JUDICIAL DISTRICT, STATE OF HAWAI'I

OHSM-1 **ITEMS INDICATED WITH *ARE OPTIONAL, BUT DO NOT LEAVE THESE ITEMS BLANK; ENTER REFUSED OR UNKNOWN** **INTENTIONAL FALSIFICATION IS A CRIME**

recognition of COMMON-LAW MARRIAGE is to protect the parties' expectations, if they are living as husband and wife in every way except that they never participated in a formal ceremony. By upholding a common-law marriage as valid, children are legitimized, surviving spouses are entitled to receive SOCIAL SECURITY benefits, and families are entitled to inherit

ILLUSTRATION BY GGS CREATIVE RESOURCES. REPRODUCED BY PERMISSION OF GALE, A PART OF CENGAGE LEARNING.

property in the absence of a will. These public policy reasons have declined in significance. Most states have abolished common law marriage, in large part because of the legal complications that arose concerning property and inheritance.

The U.S. Supreme Court has held that states are permitted to reasonably regulate marriage by prescribing who can marry and the manner in which marriage can be dissolved. States may grant an ANNULMENT or divorce on terms that they conclude are proper, because no one has the constitutional right to remain married. There is a right to marry, however, that cannot be casually denied. States are proscribed from absolutely prohibiting marriage in the absence of a valid reason. The U.S. Supreme Court, for example, struck down laws in southern states that prohibited racially mixed marriages. These anti-miscegenation statutes were held to be unconstitutional in the 1967 case of *Loving v. Virginia* (388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010), because they violated EQUAL PROTECTION of the laws.

By contrast, the court ruled in 1878 that polygamous marriages (i.e., having more than one spouse simultaneously) are illegal. The requirement that marriage involve one man and one woman was held to be essential to Western civilization and the United States in *Reynolds v. United States* (98 U.S. 145, 25 L. Ed. 244). Chief Justice MORRISON R. WAITE, writing for a unanimous court, concluded that a state (in that case, Utah) may outlaw POLYGAMY for everyone, regardless of whether it is a religious duty, as the Mormons claimed it was.

All states limit people to one living husband or wife at a time and will not issue marriage licenses to anyone who has a living spouse. Once someone is married, the person must be legally released from his or her spouse by death, divorce, or annulment before he or she may legally remarry. Persons who enter into a second marriage without legally dissolving a first marriage may be charged with the crime of bigamy.

The idea that marriage is the union of one male and one female has been thought to be so basic that it is not ordinarily specifically expressed by statute. This traditional principle has been challenged by gays and lesbians, who, until recently, have unsuccessfully sought to legalize their relationships. In *Baker v. Nelson,* (191 N. W. 2d 185 [Minn. 1971]), the Minnesota Supreme Court sustained the clerk's denial of a marriage license to a homosexual couple.

The 1993 decision of the Hawaii Supreme Court in *Baehr v. Lewin* (852 P. 2d 44, 74 Haw. 530), raised the possibility of homosexual marriage. In *Baehr*, the court held that the state law restricting legal marriage to parties of the opposite sex establishes a sex-based classification, which is subject to strict constitutional scrutiny when challenged on equal protection grounds. Although the court did not recognize a constitutional right to same-sex marriage, it indicated that the state would have a difficult time proving that the gay and lesbian couples were not being denied equal protection of the laws. On remand, the Hawaii circuit court found that the state had not met its burden, and it enjoined the state from denying marriage applications solely because the applicants were of the same sex. Before the state supreme court could issue a final ruling, the voters of Hawaii passed a REFERENDUM to amend the constitution to allow the state legislature to restrict marriage to men and women only. As a result, the lawsuit was dismissed, and the state restricted marriage solely to that of men and women.

Similar lawsuits were filed in other states, based on equal protection provisions in state constitutions. In Massachusetts, the state's highest court granted gays and lesbians the right to same-sex marriage in 2003. State supreme courts in California and Connecticut ruled in favor of same-sex marriage in 2008, and the Iowa Supreme Court did so as well in 2009. In California, the voters passed Proposition 8 in November 2008, amending the state constitution to overturn the court decision. In May 2009 the California Supreme Court upheld the validity of the proposition. State legislatures in Vermont, New Hampshire, and Maine passed same-sex marriage statutes as well. However, the Maine law was rescinded by the voters in the November 2009 election.

In the wake of *Baehr*, Congress enacted the DEFENSE OF MARRIAGE ACT OF 1996 (DOMA), Pub. L. No. 104–199, 110 Sat. 219, which defines marriage as a legal union between one man and one woman and permits states to refuse to recognize same-sex marriages performed in other states. With five states permitting same-sex marriage as of 2010, legal commentators expected constitutional challenges to DOMA from same-sex married couples who move to

other states and are denied legal protections and benefits.

Each state has its own requirements concerning the people who may marry. Before a state will issue a marriage license, a man and a woman must meet certain criteria. Some states prohibit marriage for those judged to be mentally ill or mentally retarded. In other states, however, a judge may grant permission to mentally retarded persons to marry.

Every state proscribes marriage between close relatives. The prohibited degree of relationship is fixed by state law. Every state forbids marriage to a child or grandchild, parent or grandparent, uncle or aunt, and niece or nephew, including illegitimate relatives and relatives of half blood, such as a half brother who has the same father but a different mother. A number of states also prohibit marriage to a first cousin, and some forbid marriage to a more distant relative, in-law, stepparent, or stepchild.

Age is an additional requirement. Every jurisdiction mandates that a man and a woman must be old enough to wed. In the 1800s the LEGAL AGE was as low as 12 for females. Modern statutes ordinarily provide that females may marry at age 16, and males at age 18. Sometimes a lower age is permitted with the written consent of the parents. A number of states allow for marriage below the minimum age if the female is pregnant and a judge grants permission.

Every couple who wishes to marry must comply with a state's formal requirements. Many states require a blood test or a blood test and physical examination before marriage, to show whether one party is infected with a venereal disease. In some states, for example, the clerk is forbidden to issue a marriage license until the parties present the results of the blood test.

Most states impose a waiting period between the filing of an application for a license and its issuance. The period is usually three days, but in some states the period may reach five days. Other states mandate a waiting period between the time when the license is issued and the date when the marriage ceremony may take place. Many states provide that the marriage license is valid only for a certain period of time. If the ceremony does not take place during this period, a new license must be obtained.

It has been customary to give notice of an impending marriage to the general public. The old form of notice was called *publication of the banns,* and the upcoming marriage was announced in each party's church three Sundays in a row before the marriage. These announcements informed the community of the intended marriage and gave everyone the opportunity to object if any knew of a reason why the two persons could not be married. In the early 2000s, the names of applicants for marriage licenses are published in local newspapers.

Once a license is issued, the states require that the marriage commence with a wedding ceremony. The ceremony may either be civil or religious because states may not require religious observances. Ceremonial requirements are very simple and basic, in order to accommodate everyone. In some states, nothing more is required than a declaration by each party in the presence of an authorized person and one additional witness that he or she takes the other in marriage.

A minority of states have sought to curb growing divorce rates by enacting legislation designed to encourage couples to remain married. Statutes in states such as Arkansas, Arizona, and Louisiana provide for COVENANT marriages, where couples agree to impose upon themselves limitations on their ability to divorce one another. Twenty other states have considered, but ultimately rejected, the adoption of similar bills. In covenant marriages, parties mutually agree to reject "no-fault divorce," agree to enroll in premarital or post-wedding counseling, and also agree to divorce only under certain, more limiting conditions, such as DOMESTIC VIOLENCE, abandonment, ADULTERY, imprisonment of a spouse, or lengthy separation. States that pass bills recognizing covenant marriages do not actually require such marriages, but rather formally acknowledge them as legally viable, thus creating legal recourse under the law for breaches of such covenants.

Louisiana passed its covenant-marriage law in 1997. At the time, it was touted as the first substantive effort in two centuries to make divorce more difficult, and lawmakers had hoped that other states would follow suit. Since then, however, fewer than 5 percent of Louisiana couples have opted to enter into such marriages. Arizona's version of the law is less restrictive in that it permits an additional reason for divorce based on the mutual consent of the parties.

Among their other duties, U.S. marshals are charged with executing federal laws within the states under the instructions of the courts. In September 1962, 500 federal marshals were sent to the University of Mississippi campus to protect James Meredith when he became the first African American to enroll at the institution.

FLIP SCHULKE/CORBIS

The most common objection to covenant marriages comes from those who view such measures as undue government intrusion into family matters. The counter-argument is that states increasingly have viewed divorce as a legitimate matter of public concern because of its extensive costs and the havoc it causes to primary and extended social and economic relationships. In this regard, covenant marriages are no more intrusive than are state laws that permit or deny divorce based on certain articulated grounds.

Another objection is that covenant marriages seemingly infringe upon the separation of church and state because the mandatory premarital counseling contained in the two existing laws is often provided by clergy. Other opponents to the attempted legislative measures in other states have either expressed reservation for laws that seem to limit adult autonomy and choice or have themselves been active in the so-called divorce industry. This resistance was apparently the case in Texas and Oklahoma, where covenant-marriage bills failed because of opposition by key committee chairmen who were divorce attorneys.

In addition to the failed legislative attempts to pass covenant-marriage bills in other states, different tactics to curb divorce have been tried. For example, Florida enacted the Marriage Preparation and Preservation Act in 1998, but no state has followed Florida in requiring its marriage-education curriculum for public high schools. In Wisconsin a federal judge struck down a new state law that earmarked welfare money for clergy who encouraged long-married couples to mentor younger couples. According to the judge, the measure unfairly and unconstitutionally favored ministers over lay persons, such as judges or justices of the peace. Texas passed a law allocating $3 from every marriage-license fee to be used for marriage-education research and reform.

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Celebration of Marriage; Domestic Violence; Family Law; Gay and Lesbian Rights; Miscegenation; Necessaries; Privileged Communication.

MARSHAL

A federal court officer whose job entails maintaining the peace, delivering legal papers, and performing duties similar to those of a state sheriff.

The term *marshal* originated in Old ENGLISH LAW, where it was used to describe a variety of law enforcement officers with responsibilities to the courts and the king or queen. In contemporary U.S. law, it refers primarily to the chief law officers for the federal courts (28 U.S.C.A. §§ 561 et seq.). U.S. marshals execute federal laws within the states under the instructions of the courts. Their chief duty is to enforce legal orders; they have no independent authority to question whether a judge is right or wrong. Their responsibilities include delivering writs and processes and carrying out other orders, which range from making arrests to holding property in the custody of the court. Marshals may exercise the same powers as a state sheriff.

The chain of command for U.S. marshals begins in the White House. The president appoints to a four-year term one marshal for each judicial district. Each appointment is subject to confirmation by the U.S. Senate. Once an appointment is confirmed, the president retains the power to remove the marshal at any time. In the JUSTICE DEPARTMENT, the U.S.

attorney general designates where each marshal's office is located. Each marshal appoints her or his own deputies and staff, with salaries based on schedules in federal law.

At the state and local levels, the term *marshal* is also used to describe police officers whose job is similar to that of a constable or sheriff. It can also denote the head of a city police or fire department.

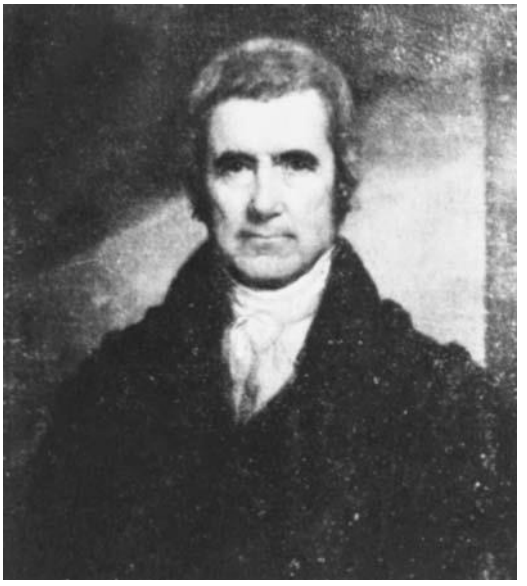
MARSHALING ASSETS AND SECURITIES

The process of organizing, ranking, and distributing funds in a manner set forth by law as being the most effective way to discharge debts that are owed to various creditors.

When assets and SECURITIES are marshalled, the *two-fund doctrine* is frequently applied. It provides that when one claimant has two possible funds in the hands of a debtor to whom the claimant is able to resort to satisfy his or her demand, and a second claimant has an interest in only one of the funds, the second claimant can force the first to satisfy the claims out of the fund in which he or she, the second claimant, has no lien.

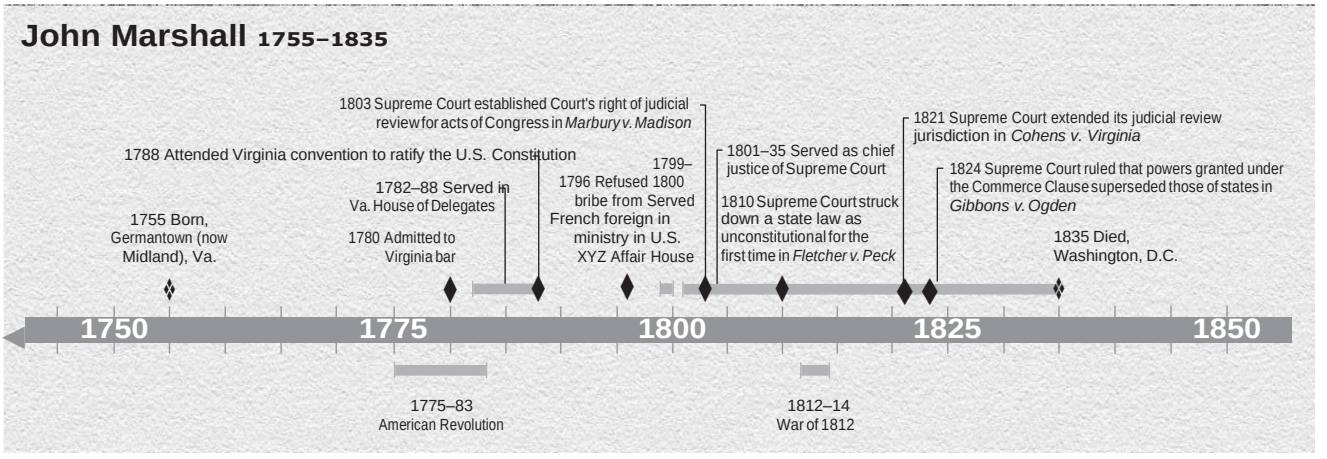
v MARSHALL, JOHN

John Marshall presided over the U.S. Supreme Court from 1801 to 1835. Appointed by President JOHN ADAMS, Marshall assumed leadership during a pivotal era. The early nineteenth century saw tremendous political battles over the future of the United States and its Constitution, often with the Court at the center of controversy. By the force of personality, argument, and shrewdness, Marshall steered it through this rocky yet formative period. He weathered harsh criticism as the Court set important precedents that increased its power and defined its role in government. Historians credit him with establishing what has been called the American judicial tradition, in which the Supreme Court acts as an independent branch of government endowed with final authority over constitutional interpretation.



John Marshall.

Marshall was born September 24, 1755, near Germantown (now Midland), Virginia. He was the son of Thomas Marshall, a wealthy landowner, JUSTICE OF THE PEACE, and sheriff. Like his father he fought in the Revolutionary War and married into a prominent family. His father's tutoring significantly enhanced his mere two years of formal education, which



were augmented in 1780 by a brief attendance at lectures in law at the College of William and Mary.

Marshall was also influenced by GEORGE WASHINGTON. Because of his service to General Washington in the war, Marshall became a strong Federalist. He later wrote about his mentor in his book *Life of George Washington* (1805–7).

Marriage ties made Marshall a relative of a leading Virginia political family. This helped secure his place in society, paving the way for an early legal and political career in the 1780s. He specialized in appellate cases and quickly distinguished himself in the Virginia state bar. He also served in Virginia's council of state from 1782 to 1784, and in its house of delegates four times between 1782 and 1795. But it was as a partisan of the Federalists—the opponents of the states' rights–minded Republicans—that he came to wide acclaim. The struggle between the Federalists and the Jeffersonian Republicans was the most important political contest of the day. Marshall served as a devoted publicist and organizer for the Federalist cause in Virginia, and this work earned him various offers to serve as U.S. attorney general and as an associate justice of the Supreme Court. It also earned him the animosity of his distant cousin, Republican THOMAS JEFFERSON, who soon became U.S. president and was his lifelong political adversary.

IT IS, EMPHATICALLY, THE PROVINCE AND DUTY OF THE JUDICIAL DEPARTMENT TO SAY WHAT THE LAW IS.
—JOHN MARSHALL

In 1798 Marshall agreed to serve Federalist president JOHN ADAMS as one of three U.S. ministers to France during one of the Napoleonic Wars between France and Great Britain. In a scandal known as the XYZ AFFAIR, the French foreign ministry attempted to solicit a bribe from the U.S. emissaries, and Marshall became a national hero for refusing. He quickly emerged as the leading spokesman for FEDERALISM in Washington, D.C., as a member of Congress from 1799 to 1800 and briefly as SECRETARY OF STATE under Adams in 1800. Then Adams lost the 1800 presidential election to Jefferson, and the Republicans won control of Congress. In a desperate attempt to preserve the Federalists' power, Adams spent the remaining days of his administration making judicial appointments. Sixteen new positions for judges on federal circuit courts and dozens for justices of the peace in the District of Columbia were handed out during the final days of Adams's administration. These last-minute appointees came to be known as MIDNIGHT JUDGES. One of these seats went to Marshall, who was appointed chief justice of the Supreme Court.

On March 4, 1801, Marshall assumed his duties as the head of the Court. Jefferson and the Republicans were furious over Adams's court stacking, and they swiftly quashed the appointments—except that, inexplicably, they did not challenge Marshall's. Marshall kept the Court out of the fray. He feared that in a conflict between the judiciary and the EXECUTIVE BRANCH, the Court would lose.

Marshall again faced political conflict when in 1803 the Court ruled on a case brought by William Marbury, whose appointment as a D.C. justice of the peace had been one of those barred by the Republicans. Marshall's opinion for the unanimous Court in *MARBURY V. MADISON*, 5 U.S. (1 Cranch) 137, 2 L. Ed. 60, dismissed Marbury's suit on the ground that the Supreme Court lacked jurisdiction to rule on it. But at the same time, the Court restated the position that it had the power to rule on questions of constitutionality. By striking down a section of the JUDICIARY ACT OF 1789 (1 Stat. 73), Marshall's opinion marked the first time that the Court overturned an act of Congress. Not for more than 50 years would it exercise this power again. Marshall asserted the right of the Supreme Court to engage in JUDICIAL REVIEW of the law, writing, "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury* was the crucial first step in the evolution of the Supreme Court's authority as it exists today.

Marshall emphasized the need to limit state power by asserting the primacy of the federal government over the states. In 1819, as Marshall reached the height of his influence, he cited the Contracts Clause of the U.S. Constitution (art. 1, § 10) as a basis for protecting corporate charters from state interference (TRUSTEES OF DARTMOUTH COLLEGE V. WOODWARD, 17 U.S. [4 Wheat.] 518, 4 L. Ed. 629). That year he also struck a blow to STATES' RIGHTS in *MCCULLOCH V. MARYLAND*, 17 U.S. (4 Wheat.) 316, 4 L. Ed. 579, where he noted that the Constitution is not a "splendid bauble" that states can abridge as they see fit. In 1821 he advanced the theory of judicial review, rejecting a challenge by the state of Virginia to the appellate authority of the Supreme Court (*Cohens v. Virginia,* 19 U.S. [6 Wheat.] 264, 5 L. Ed. 257).

In his written opinions, Marshall typically relied on the power of logic and his own

forceful eloquence, rather than citing law. This approach was noted by Associate Justice JOSEPH STORY: "When I examine a question, I go from headland to headland, from case to case. Marshall has a compass, puts out to sea, and goes directly to the result."

Marshall was not without opponents. Foremost among them was Jefferson. In 1810 Jefferson wrote to President JAMES MADISON that "[t]he Chief Justice's leadership was marked by "cunning and sophistry" and displayed "rancourous hatred" of the democratic principles of the Republicans. Jefferson led the Republican attack on Marshall with the accusation that he twisted the law to suit his own biases.

Although Marshall weathered the attacks, his authority, and the Court's, was ultimately affected. Not all his decisions were enforced; some were openly resisted by the president. New appointments to the Court brought states' rights advocates onto the bench, and Marshall began to compromise as a leader and to make concessions to ideological opponents.

Marshall died in office on July 6, 1835.

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v MARSHALL, MARGARET HILARY

On October 13, 1999, Margaret Hilary Marshall became the first woman chief justice of the Supreme Judicial Court of Massachusetts.

Margaret H. Marshall.
COURTESY OF THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

Marshall was born in 1944 in Newcastle, Natal, South Africa. Her mother, Hilary A. D. Marshall, was born in Richmond, England. Her late father, Bernard Charles Marshall, was a native of Johannesburg, South Africa, and was a chemist and production manager at the African Metals Corporation.

In 1966 Marshall received a bachelor of arts degree from Witwatersrand University in Johannesburg. At Witwatersrand, Marshall majored in English and art history. From 1966 to 1968 she was president of the National Union of South African Students, leading her fellow classmates in protests against apartheid. The National Union of South African Students was the only multiracial national group in the country at the time.

Marshall immigrated to the United States in 1968 to pursue an education at the graduate level. She studied at Harvard University, where she was awarded a graduate scholarship by the Ernest Oppenheimer Trust. The following year, she received her master's degree in education from Harvard. After doing so, Marshall decided on a law career. She studied at Yale Law School from 1973 until 1975. Although she completed her last year of law school at Harvard, Yale awarded her a JURIS DOCTOR degree in 1976.

Marshall began her career as a lawyer in private practice, working as both an associate

and a member in the Boston law firm of Csaplar & Bok from 1976 through 1989. In 1978 she became a naturalized U.S. citizen. She then continued in the private PRACTICE OF LAW in Boston as a partner at the prominent law firm of Choate, Hall & Stewart from 1989 through 1992. During these years Marshall's practice consisted primarily of civil LITIGATION. She earned a reputation as an expert in the area of INTELLECTUAL PROPERTY, which includes patent, COPYRIGHT, and trademark laws that protect inventions, designs, artistic and literary products, and commercial symbols.

While pursuing her career in private practice, Marshall continued in the fight against apartheid in her native county. She urged the United States to impose sanctions against South Africa due to its racial SEGREGATION. At that time, advocating sanctions against South Africa was a treasonable offense in her native country. Consequently, she was not able to return to South Africa because of her activities in the United States.

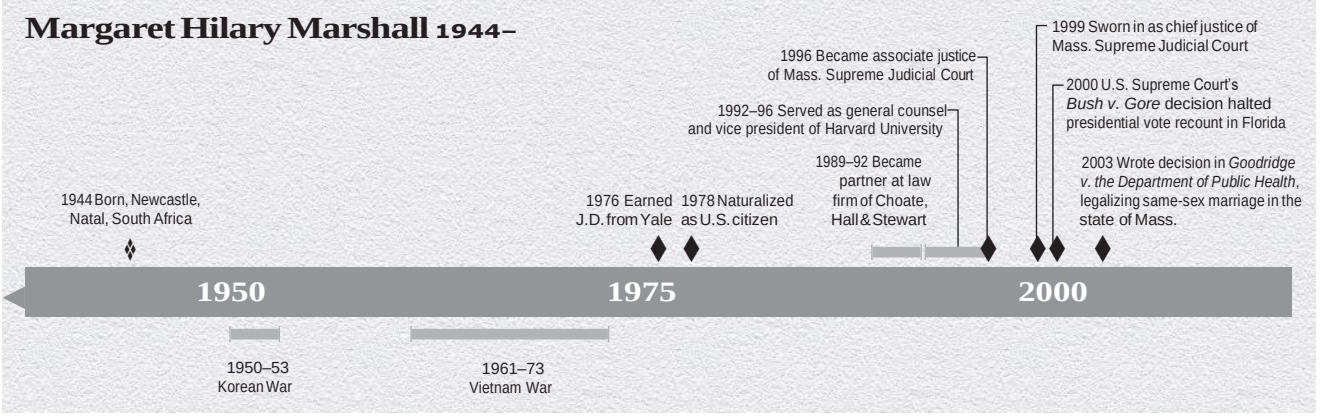
Marshall returned to Harvard University in 1992, where she served as general counsel and vice president until 1996. In that position, Marshall was responsible for Harvard's legal and regulatory affairs. Furthermore, she served as an active member of the President's Academic Council.

In November 1996 Marshall became an associate justice of the Supreme Judicial Court of Massachusetts. She was the second woman ever to serve as a justice on the Massachusetts Supreme Judicial Court, which is the oldest court in continuous service in the United States.

As a Supreme Judicial Court justice, Marshall is known for authoring opinions that strongly support CIVIL RIGHTS and liberties. For example, in one opinion, she supported the constitutional rights of sex offenders by holding that they are entitled to a hearing before their names are entered on the sex-offender registry in Massachusetts. Marshall is also known for opposing CAPITAL PUNISHMENT.

On March 9, 1998, Marshall authored an opinion in the widely publicized case of *Commonwealth of Massachusetts v. Louise Woodward*, 694 N.E.2d 659 (Mass. 1998). In that case, at the trial-court level, a jury found Woodward, an au pair from England, guilty of the MURDER of Matthew Eappen, an eight-month-old child under her care. However, the trial judge reduced the jury's verdict from murder to INVOLUNTARY MANSLAUGHTER and sentenced Woodward to time served. Both sides appealed, and the case ultimately went before the Supreme Judicial Court for disposition. In the 46-page decision, Marshall stated that the reduced conviction of MANSLAUGHTER, as well as the sentence imposed by the trial judge, were lawful. In making her ruling, Marshall explained that the trial judge merely invoked the commonly used right to reduce a jury verdict and to sentence a DEFENDANT to time served.

After Marshall served as an associate justice on the Supreme Judicial Court for three years, the governor of Massachusetts, Paul Cellucci, nominated her to be the court's first female chief justice and the first female to head one of the three branches of government in Massachusetts. On October 13, 1999, the Governor's Council approved Marshall's nomination. In December of that year, Marshall was sworn in as chief justice of the Supreme Judicial Court. As such, she is the first naturalized U.S. citizen to become a chief justice.



As Chief Justice, Marshall designates which judges write opinions on particular cases, acts as the liaison to the Massachusetts governor and legislature, and has wide ranging authority over the administration of the state's courts. In a keynote address delivered to the Massachusetts Bar Association on January 2, 2000, Marshall stated, "Because of my experiences in South Africa, I value profoundly the central place of law in American society … law in the true sense. An impartial judiciary. Equal justice under the law."

In January 2002 Marshall wrote the majority opinion in a unanimous decision that held that children who are conceived by ARTIFICIAL INSEMINATION after the death of their father have the same inheritance rights as other children. The ruling was believed to be the first on the controversial issue by any state SUPREME COURT.

Also in January 2002, Marshall addressed the Massachusetts Bar Association Conference, where she called for "a revolution in the administration of justice," stating that the court system needed to improve its management system as well as its staffing and budget controls. In March 2002, her discussion of the court system's problems were amplified in a 52-page report that was published by a blue-ribbon panel appointed by Marshall.

In 2003 Marshall wrote the decision in *Goodridge v. the Department of Public Health*, 440 Mass. 309, 798 N.E.2d 941 (Mass. 2003) that legalized same-sex marriages in the state of Massachusetts by ruling the ban on such marriages violated the EQUAL PROTECTION clauses of the state constitution. The ruling made Massachusetts the first state to legalize same-sex marriages in the country.

Marshall is married to *New York Times* columnist Anthony Lewis and has three step-children.

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MARSHALL PLAN

After WORLD WAR II, Europe was devastated and urgently needed an organized plan for reconstruction and economic and technical aid. The Marshall Plan was initiated in 1947 to meet this need.

The originator of the plan, U.S. Secretary of State George C. Marshall, introduced it in a speech at Harvard University on June 5, 1947. He pointed out two basic reasons for providing aid to Europe: the United States sought the reestablishment of the European countries as independent nations capable of conducting valuable trade with the United States; and the threat of a Communist takeover was more prevalent in countries that were suffering economic depression.

In 1947 a preliminary conference to discuss the terms of the program convened in Paris. The Soviet Union was invited to attend but subsequently withdrew from the program, as did other Soviet countries.

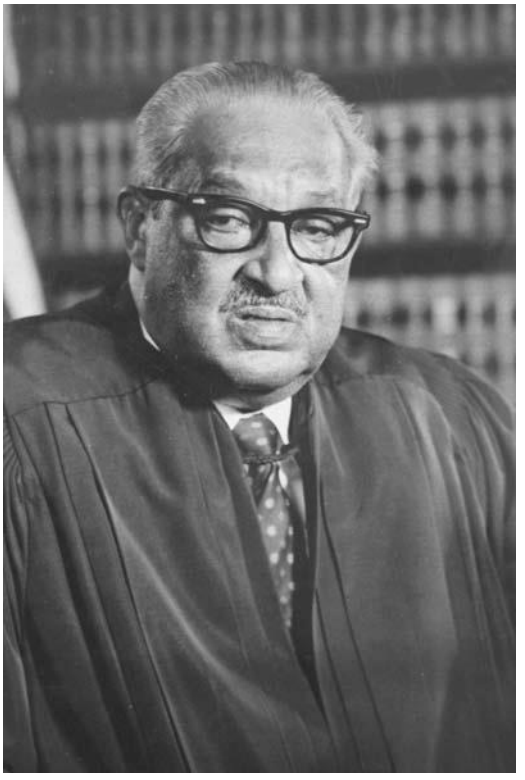
Sixteen European countries eventually participated, and, in July 1947, the Committee for European Economic Cooperation was established to allow representatives from member countries to draft a report that listed their requirements for food, supplies, and technical assistance for a four-year period.

The Committee for European Economic Cooperation subsequently became the Organization of European Economic Cooperation, an expanded and permanent organization that was responsible for submitting petitions for aid. In 1948, Congress passed the Economic Cooperation Act (62 Stat. 137), establishing funds for the Marshall Plan to be administered under the Economic Cooperation Administration, which was directed by Paul G. Hoffman.

Between 1948 and 1952, the sixteen-member countries received more than $13 billion dollars in aid under the Marshall Plan. The plan was generally regarded as a success that led to industrial and agricultural production, while stifling the Communist movement. The plan was not without its critics, however, and many Europeans believed the COLD WAR hostilities between the Soviet nations and the free world were aggravated by it.

v MARSHALL, THURGOOD

Thurgood Marshall, the first African American to serve on the U.S. Supreme Court, saw law as a catalyst for social change. For nearly 60 years, as both a lawyer and a jurist, Marshall worked to dismantle the system of SEGREGATION and improve the legal and social position of minorities.



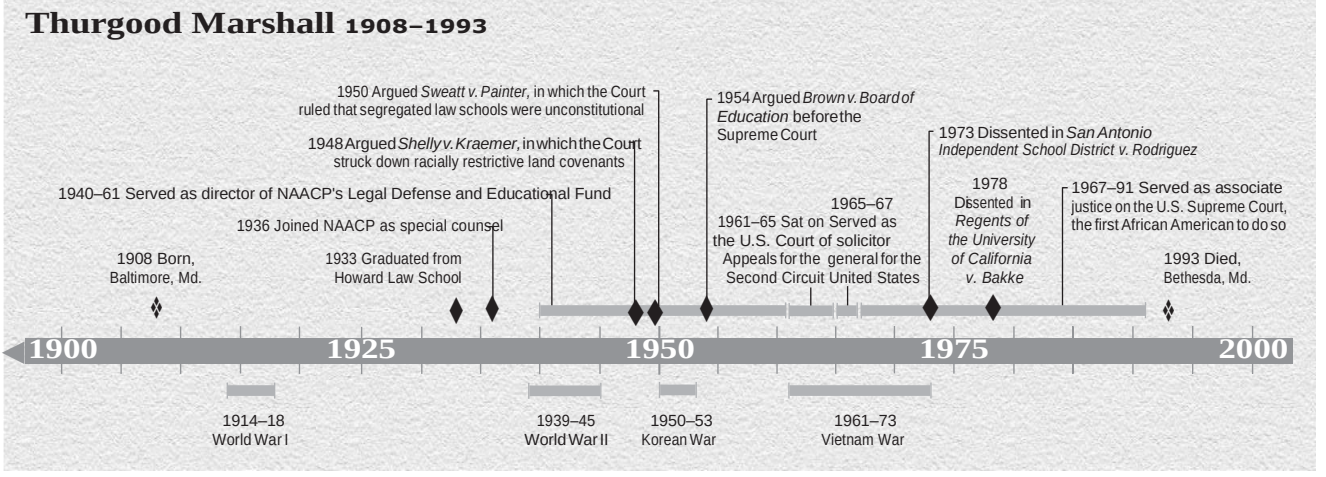
Thurgood Marshall.
LIBRARY OF CONGRESS

Marshall was born July 2, 1908, in Baltimore, the son of a Pullman porter and a schoolteacher. He was a graduate of Lincoln University, a small, all-black college in Pennsylvania, and Howard University Law School in Washington, D.C. At Howard, Marshall excelled under the guidance of Vice Dean CHARLES HAMILTON HOUSTON, the first African American to win a case before the U.S. Supreme Court. Houston encouraged his students to become not just lawyers but "social engineers" who could use the legal system to improve society. Marshall graduated first in his law class in 1933.

Marshall's attendance at predominantly black Howard University illustrates the barriers faced by African-Americans during the early twentieth century. Although Marshall wished to attend law school at the University of Maryland (a public institution in his home town of Baltimore), he was prohibited by law from doing so because of his race. This injustice helped set Marshall on a course of opposing all forms of official segregation that denied equal opportunities to African-Americans.

After law school, Marshall set up a practice in Baltimore, representing indigent clients in civil rights cases. In 1936 his mentor Houston offered him a position with the National Association for the Advancement of Colored People (NAACP), and in 1940 Marshall became director of the NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, a position he held until 1961. Determined to eliminate segregation, Marshall coordinated a nationwide campaign to integrate higher education. He filed several successful lawsuits against public graduate and professional schools that refused to accept African American students. These suits paved the way for similar cases at the high school and elementary school levels. Marshall also journeyed throughout the deep South, traveling 50,000 miles per year to fight JIM CROW LAWS (a series of laws that provided for racial segregation in the South) and to represent criminal defendants.

Marshall argued 32 cases before the U.S. Supreme Court and won 29 of them. No doubt his most famous and far-reaching triumph



before the High Court was *BROWN V. BOARD OF EDUCATION OF TOPEKA, KANSAS*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954). In that case, the father of African American student Linda Brown sued the school board of Topeka, Kansas, over its segregation policy. Brown was required by law to attend an all African American school several blocks from her home even though an all white public school was located in her own neighborhood. Under Kansas law, cities of more than 15,000 people, such as Topeka, could choose to operate segregated schools. Marshall argued that these segregated schools, defended by officials as "separate but equal," were unconstitutional.

The SEPARATE-BUT-EQUAL doctrine originated in PLESSY V. FERGUSON, 163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256 (1896), a case allowing segregated public accommodations for whites and blacks. In a plainspoken argument, Marshall dismissed as fallacy the notion that segregated schools offered the same educational experiences to black and white students. Sociological and psychological studies demonstrated that black children were in fact harmed by the policy of school segregation. The students' self-esteem was damaged and their future diminished when they were forced to accept inadequate facilities, equipment, and educational opportunities. Marshall argued that the only purpose segregation served was to perpetuate the myth of African Americans' inferiority. A unanimous Court agreed and struck down the separate-but-equal doctrine, a momentous victory for Marshall, affecting public schools in twenty-one states.

Marshall was appointed to the U.S. Court of Appeals for the Second Circuit in 1961, and served there until 1965 when he was named SOLICITOR GENERAL for the United States. He was appointed to the U.S. Supreme Court in 1967 by President LYNDON B. JOHNSON and served as an associate justice for 24 years.

While on the Court, Marshall was known more for his impassioned dissents than for his majority opinions. In particular, as a staunch opponent of CAPITAL PUNISHMENT, he regularly voiced his disagreement with the majority in death penalty cases. He was also a firm backer of AFFIRMATIVE ACTION and contributed one of his most famous dissents in *REGENTS OF THE UNIVERSITY OF CALIFORNIA V. BAKKE*, 438 U.S. 265, 98 S. Ct. 2733, 57 L. Ed. 2d 750 (1978). In that case, Marshall criticized the high court's ruling that a public medical school's policy of reserving 16 of 100 spots for minority students was unconstitutional. Marshall also dissented in *San Antonio Independent School District v. Rodriguez,* 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973), disagreeing with the majority view that a Texas property tax system used to fund public education was acceptable, even though it allowed wealthier districts to provide a better school system for students in those districts than less wealthy districts could provide. Marshall objected strongly to the property tax arrangement, claiming that it deprived poor children of an equal education.

Marshall wrote the majority opinion in *Amalgamated Food Employees Union v. Logan Valley Plaza,* 391 U.S. 308, 88 S. Ct. 1601, 20 L. Ed. 2d 603 (1968), in which the Court declared that a shopping center was a public forum from which picketers could not be barred by private owners.

Marshall retired from the Court in 1991, but continued his criticism of government policies that were detrimental to African Americans or other disenfranchised groups.

Marshall died on January 24, 1993, in Bethesda, Maryland. Upon Marshall's death, nearly 20,000 mourners filed by his casket during the 12 hours it lay in state in the Great Hall of the U.S. Supreme Court.

THE GOVERNMENT [THAT THE FRAMERS OF THE CONSTITUTION] DEVISED REQUIRED SEVERAL AMENDMENTS, A CIVIL WAR, AND MOMENTOUS SOCIAL TRANSFORMATION TO ATTAIN THE SYSTEM OF CONSTITUTIONAL GOVERNMENT, AND ITS RESPECT FOR THE INDIVIDUAL FREEDOMS AND HUMAN RIGHTS, THAT WE HOLD AS FUNDAMENTAL TODAY.
—THURGOOD MARSHALL

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Civil Rights Movement; Integration; School Desegregation.

MARTIAL LAW

The exercise of government and control by military authorities over the civilian population of a designated territory.

Martial law is an extreme and rare measure used to control society during war or periods of civil unrest or chaos. According to the Supreme Court, the term *martial law* carries no precise meaning (*Duncan v. Kahanamoku,* 327 U.S. 304, 66 S. Ct. 606, 90 L. Ed. 688 [1946]). However, most declarations of martial law have some common features. Generally, the institution of martial law contemplates some use of military force. To a varying extent, depending on the martial law order, government military personnel have the authority to make and enforce civil and criminal laws. Certain civil liberties may be suspended, such as the right to be free from unreasonable SEARCHES AND SEIZURES, FREEDOM OF ASSOCIATION, and freedom of movement. And the writ of HABEAS CORPUS may be suspended (this writ allows persons who are unlawfully imprisoned to gain freedom through a court proceeding).

In the United States, martial law has been instituted on the national level only once, during the Civil War, and on a regional level only once, during WORLD WAR II. Otherwise, it has been limited to the states. Uprisings, political protests, labor strikes, and riots have, at various times, caused several state governors to declare some measure of martial law.

Martial law on the national level may be declared by Congress or the president. Under Article I, Section 8, Clause 15, of the Constitution, Congress has the power "[t]o provide for calling forth the Militia to execute the Laws of the Union, suppress insurrections and repel Invasions." Article II, Section 2, Clause 1, of the Constitution declares that "[t]he 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." Neither constitutional provision includes a direct reference to martial law. However, the Supreme Court has interpreted both to allow the declaration of martial law by the president or Congress. On the state level, a governor may declare martial law within her or his own state. The power to do so usually is granted in the state constitution.

Congress has never declared martial law. However, at the outset of the Civil War, in July 1861, Congress ratified most of the martial law measures declared by President ABRAHAM LINCOLN. Its martial law declaration gave the Union military forces the authority to arrest persons and conduct trials. However, Congress initially refused to ratify Lincoln's suspension of the writ of habeas corpus. This refusal created friction between Congress and the president and raised the question of whether unilateral suspension of the writ under martial law was within the president's power. The Supreme Court reviewed the issue and ruled in *Ex parte Merryman,* 17 F. Cas. 144 (1861) (No. 487), that only Congress had the power to suspend the writ of habeas corpus. After Congress approved Lincoln's suspension of the writ in 1863, Union forces were authorized to arrest and detain Confederate soldiers and sympathizers, but only until they could be tried by a court oflaw.

The martial law declared by Lincoln during the Civil War spawned another legal challenge, this one to the military courts: EX PARTE MILLIGAN, 71 U.S. (4 Wall.) 2, 18 L. Ed. 281 (1866). Lamdin Milligan, a civilian resident of Indiana, was arrested on October 5, 1864, by the Union military forces. Milligan was charged with five offenses: conspiring against the United States, affording AID AND COMFORT to rebels, inciting insurrection, engaging in disloyal practices, and violating the laws of war. Milligan was tried, found guilty, and sentenced to prison by a military court.

Although the habeas corpus petition had been suspended, the Supreme Court accepted Milligan's petition for a writ of habeas corpus. The Supreme Court held that neither the president nor Congress could give federal military forces the power to try a civilian who lived in a state that had federal courts. *Milligan* firmly established the right of the U.S. Supreme Court to review the propriety of martial law declarations.

The next large-scale martial law declaration took place 80 years later. On December 7, 1941, the day that Japanese warplanes bombed Pearl Harbor in what was then the territory of Hawaii, Governor Joseph B. Poindexter, of Hawaii, declared martial law on the Hawaiian Islands. The governor also suspended the writ of habeas corpus. The commanding general of the Hawaiian military assumed the position of military governor. All courts were closed by order of the military governor, and the military was authorized to arrest, try, and convict

persons. Under Poindexter's martial law order, approved by the president, the military courts were given the power to decide cases without following the RULES OF EVIDENCE of the courts of law, and were not limited by sentencing laws in determining penalties.

In February 1942 the Department of War appointed General John L. DeWitt to carry out martial law in California, Oregon, Washington, and the southern part of Arizona. In March 1942 DeWitt announced that the entire Pacific Coast of the United States would be subject to additional martial law measures. Later that month he declared that all alien Japanese, Germans, and Italians, and all persons of Japanese descent, on the Pacific Coast were to remain inside their home between 8:00 P.M. and 6:00 A.M.

These martial law measures were challenged by criminal defendants shortly after they were put in force. In *Duncan v. Kahanamoku,* 327 U.S. 304, 66 S. Ct. 606, 90 L. Ed. 688 (1946), the Supreme Court held that the military tribunals established under martial law in Hawaii did not have jurisdiction over common criminal cases because the Hawaiian Organic Act (31 Stat. 141 [48 U.S.C.A. § 532]) did not authorize the governor to close the courts of law when they were capable of functioning. In *Duncan* the Court ordered the release of two prisoners who had been tried and convicted of EMBEZZLEMENT and assault by military courts.

In other cases the High Court was more tolerant of CIVIL RIGHTS deprivations under martial law. In *Hirabayashi v. United States,* 320 U.S. 81, 63 S. Ct. 1375, 87 L. Ed. 1774 (1943), the Court upheld a curfew placed on Japanese Americans during the war, on the ground of military necessity, and in KOREMATSU V. UNITED STATES, 323 U.S. 214, 65 S. Ct. 193, 89 L. Ed. 194 (1944), the Court justified the random internment (imprisonment) of over 110,000 Japanese Americans during the war.

At least one governor has used martial law to enforce state agency regulations. In 1931 Governor Ross S. Sterling, of Texas, sent Texas NATIONAL GUARD troops into east Texas oil fields to force compliance with limits on the production of oil and an increase in the minimum number of acres required between oil wells. The regulations had been drawn up by the Texas Railroad Commission with the approval of the Texas Legislature, but similar regulations had been enjoined (stopped) by a federal court just four months earlier. In 1932 the Supreme Court invalidated Sterling's use of martial law, holding that it violated the constitutional DUE PROCESS rights of the property owners (*Sterling v. Constantin,* 287 U.S. 378, 53 S. Ct. 190, 77 L. Ed. 375 [1932]).

Another governor declared martial law in response to an assassination and rumors of political corruption. In June 1954 Albert Patterson, a nominee for state attorney general in Alabama, was shot to death on a street in Phenix City. Alabama governor Gordon Persons declared martial law in Phenix City and dispatched General Walter J. ("Crack") Hanna and the Alabama National Guard to take over the city. Hanna appointed a military mayor, and the troops took control of the county courthouse and city hall. The troops physically removed certain officials from the courthouse and city hall, seized gambling equipment, and revoked liquor licenses.

Martial law usually is used to try to restore and maintain peace during civil unrest. It does not always yield the desired results. In May 1970, for example, Ohio governor James Rhodes declared limited martial law by sending in National Guard troops to contain a Kent State University protest against the VIETNAM WAR. Four protestors were shot and killed by the troops. In a case brought by their survivors, the Supreme Court held that the governor and other state officials could be sued if they acted beyond the scope of state laws and the federal Constitution (*Scheuer v. Rhodes,* 416 U.S. 232, 94 S. Ct. 1683, 40 L. Ed. 2d 90 [1974]).

Martial law is generally an act of last resort. Courts will uphold a decision to use troops only if it is necessary and proper.

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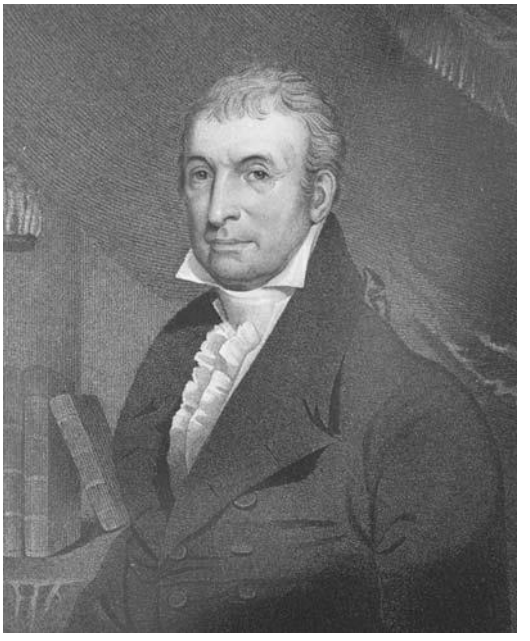
Habeas Corpus; Japanese American Evacuation Cases; Kent State Student Killings; Military Law; Military Occupation; Militia; National Guard.

. . . IN A FEDERAL GOVERNMENT, THE PARTIES TO THE COMPACT ARE NOT THE PEOPLE, AS INDIVIDUALS, BUT THE STATES, AS STATES; AND . . . [IT IS] BY THE STATES AS STATES, . . . THAT THE SYSTEM OF GOVERNMENT OUGHT TO BE RATIFIED, AND NOT BY THE PEOPLE, AS INDIVIDUALS.
—LUTHER MARTIN

v MARTIN, LUTHER

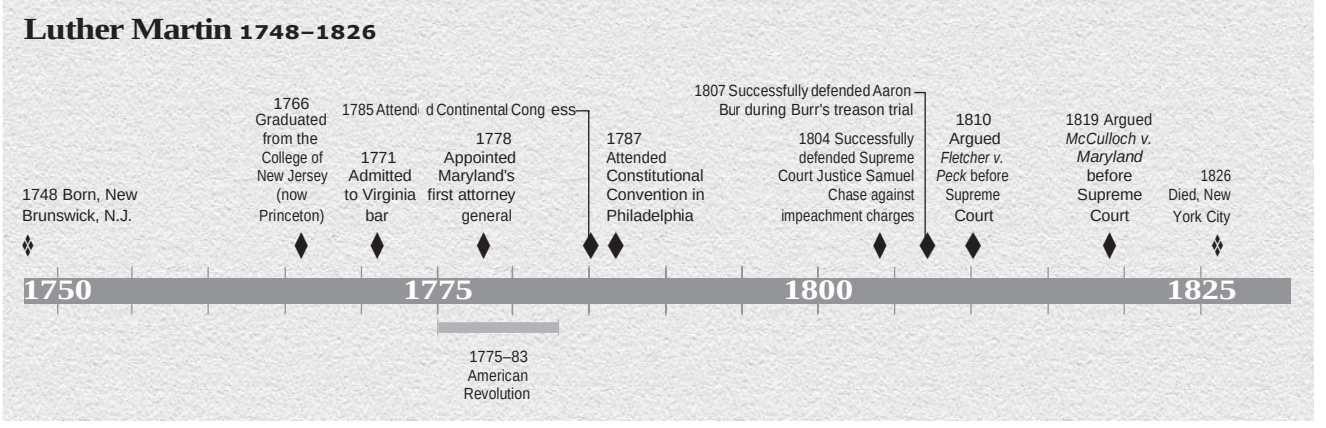
Luther Martin was a distinguished lawyer and statesman who played an influential role in U.S. law and politics during the early years of the republic. During most of his legal career, he served as Maryland's attorney general.

Most sources cite Martin's birth as being on February 9, 1748, near New Brunswick, New Jersey. He graduated from the College of New Jersey (now known as Princeton University) in 1766 and then taught school in Maryland for three years. In 1770, he began studying law and was admitted to the Virginia bar in 1771. He established a successful law practice in Maryland and Virginia and became known for his superior legal talents.



Luther Martin.
LIBRARY OF CONGRESS

In 1774 Martin entered politics as a member of the Annapolis Convention, which was convened to formulate a list of grievances against the British government. In 1778, he was appointed to be Maryland's first attorney general, a position he would retain for most of the next 40 years. He attended the CONTINENTAL CONGRESS in 1785 and the Constitutional Convention in 1787. Martin opposed the idea of a strong federal government, preferring that power reside in the states. Unhappy with the



final version of the Constitution, he opposed its ratification.

As an attorney, Martin achieved a prestigious reputation and argued several landmark cases before the U.S. Supreme Court. In *FLETCHER V. PECK*, 10 U.S. (6 Cranch) 87, 3 L. Ed. 162 (1810), the Court for the first time invalidated a state law as contrary to the U.S. Constitution. The Georgia legislature had revoked a land grant that originally had been permitted by a contract. The Court ruled that public grants were contractual obligations and that they could not be abrogated without fair compensation. Chief Justice JOHN MARSHALL based the decision on the Contract Clause of the Constitution (Art. I, Sec. 10, Cl. 1), which provides that no state shall impair the obligations of contract.

Martin also appeared before the U.S. Supreme Court in *MCCULLOCH V. MARYLAND*, 17 U.S. (4 Wheat.) 316, 4 L. Ed. 579 (1819), where he argued that Maryland had the right to impose a tax on a federally chartered bank. Chief Justice Marshall ruled against Maryland, finding that the state had no authority under the Constitution to tax any agency that has been authorized by the federal government. In Marshall's words, "the power to tax is the power to destroy." Such a power did not comport with the allocation of powers under the Constitution.

Martin also served as counsel in two politically charged cases. In 1804 he successfully helped to defend U.S. Supreme Court Justice SAMUEL CHASE against IMPEACHMENT. Chase, a Federalist judge who had outraged Democrats with several decisions that appeared to be based as much on politics as on law, was acquitted at his Senate trial after Martin convinced senators that the impeachment itself was politically motivated.

In 1807 Martin represented AARON BURR, who was accused of TREASON. Martin argued that the charge was baseless and that it was motivated by President Thomas Jefferson's personal and political dislike of Burr. His indictment of the Jefferson administration helped to convince the jury to acquit Burr.

Martin suffered a stroke in 1820, shortly after arguing *McCulloch v. Maryland.* Despite his stature and his successful law practice, Martin was insolvent. The Maryland legislature levied a $5 license fee on every attorney to help support Martin. In 1823 Aaron Burr took Martin into his home, where Martin lived for three years. Martin died on July 10, 1826, in New York City.

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Bank of the United States; Constitution of the United States.

MARTIN V. HUNTER'S LESSEE

The framing of the U.S. Constitution came after the ARTICLES OF CONFEDERATION failed to create a viable national government. The 13 former colonies had retained most of their political power, and the resulting national government was impotent. In contrast, the U.S. Constitution allocated powers between the national government and state governments. Moreover, the three branches of the national government were given specific grants of power. Despite these provisions and the history of the confederation era, some states were outraged that the U.S. Supreme Court could review and reverse state court decisions. The high court issued such rulings and asserted its jurisdiction without incident until 1813, when the Virginia Court of Appeals refused to enforce the high court's judgment. The case returned to the U.S. Supreme Court in 1816 and led to a landmark decision, *Martin v. Hunter's Lessee*, 14 U.S. 304 (1816). In a lengthy and magisterial opinion, Justice JOSEPH STORY reaffirmed the Court's jurisdiction and set to rest the idea that state courts could decide whether or not to honor federal court decisions. In addition, the Court raised for the first time that the federal government wielded implied powers as well as enumerated powers.

The legal dispute in question reached back to the Revolutionary War. Following the Declaration of Independence, Virginia passed a law that authorized the confiscation of property held by Loyalists to the British regime. Thomas Lord Fairfax, a Loyalist, held substantial property in Northern Neck, Virginia. After his death, his heir, Denny Martin, sought to claim this property but discovered that it had been confiscated and sold to a private party by

the state of Virginia. Martin filed suit in Virginia court, asking the court to eject the current owner and to restore title to him. He based his claim on the TREATY OF PARIS (1783) and Jay's Treaty (1794), which the U.S. had signed with Great Britain. The Treaty of Paris ended the War for Independence, and Jay's Treaty resolved lingering disputes over parts of the peace treaty. Both treaties contained provisions that forbade the confiscation of Loyalist property. Martin pointed to Article III of the Constitution, which grants the judicial power of the U.S. to the U.S. Supreme Court and gives it jurisdiction to hear disputes involving treaties. He contended that federal treaty provisions trumped state laws. The U.S. Supreme Court agreed in 1813 and ordered Virginia to enforce the Court's judgment restoring title to Martin.

Martin was to be disappointed, as the Virginia Court of Appeals, the commonwealth's highest court, refused to enforce the judgment. It claimed that the U.S. Supreme Court had no power to review state court decisions. Several other states were sympathetic to this viewpoint, signaling a looming crisis over the judicial powers of the national government. It was in this light that the U.S. Supreme Court issued its decision in March 1816. Chief Justice JOHN MARSHALL, a Virginian with financial and other conflicts of interests, did not participate in the decision, leaving it in the hands of Justice Story and the five other justices.

The Court, in a unanimous decision, rejected Virginia's argument and held that the U.S. Supreme Court had the constitutional and statutory authority to review state court decisions. Justice Story, writing for the Court, conducted a lengthy review of the language of the constitutional and statutory provisions, but he also looked at the historical factors that had led to the framing of Article III. Story, one of the great legal thinkers of the nineteenth century, bluntly dismissed Virginia's claim that the states, in agreeing to the Constitution, had retained their absolute sovereignty. This compact theory of government was, in Story's view, the basis for the Articles of Confederation but not the Constitution. He noted that the Constitution's preamble states that the document was ordained and established "by the people of the United States" and not by the states in their sovereign capacities. The Constitution was not "carved out of existing state sovereignties, nor a surrender of powers already existing in state institutions." In essence, the people had drawn up their government on a clean slate and had allocated powers to the states, the federal government, and to the three branches of the federal government.

This clean slate was evidenced in the allocation of judicial power. Article III laid heavy emphasis on the superiority of the national judicial power in its statement that "the judicial power of the United States shall be vested in such inferior courts as the Congres may from time to time ordain and establish." Story reviewed the text of this provision, using the "natural and obvious sense" of each word. It was illogical to grant the judicial power to a supreme court and then to argue that inferior state courts could take away such power. Therefore, Story concluded that Congress had the duty to vest the "whole judicial power" to the U.S. Supreme Court. The word "shall" loomed large in this discussion, as it signified that Congress did not have discretion to vest less than absolute judicial power. Story also suggested that the federal government held implied powers to execute the commands of the Constitution as well as the enumerated powers contained in the document. Without such implied powers, the government could be hamstrung by pinched readings of its authority to carry out policies for the good of the people.

Having established the constitutional grounds for the right to review state-court decisions, Story turned to Virginia's statutory challenge. Section 25 of the JUDICIARY ACT OF 1789, one of the first acts passed by the first Congress, gave the U.S. Supreme Court the authority to issue judgments involving treaty-based lawsuits. Virginia claimed that this violated Article III and the TENTH AMENDMENT, which in essence states that all powers not delegated to the three branches of the federal government are reserved to the states. Justice Story rejected this claim. The U.S. Supreme Court needed to retain jurisdiction over treaties as well as other types of lawsuits named in the Judiciary Act. Story was frank in his criticism. The Constitution had been drafted, in part, to prevent "state attachments, state prejudices, state jealousies, and state interests." Without a manifestly supreme court, states could "obstruct, or control … the regular administration of justice." Moreover, the uniformity of

decisions was an important goal. Great mischief would take place if each state could interpret laws, treaties, and the U.S. Constitution. Finally, Story noted that if Virginia's interpretation were to be adopted, the U.S. Supreme Court would have no power to review any state criminal case. Such an interpretation made no sense when the intent of the Framers was reviewed. Therefore, the U.S. Supreme Court had the power to review state-court decisions, and federal judicial supremacy was affirmed.

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MARTINDALE-HUBBELL LAW DIRECTORY

A database containing information about attorneys and law firms around the world.

Primarily lawyers use the *Martindale-Hubbell Law Directory* to assist them in the practice of their profession. An attorney may use the directory, for example, to find out more information about a lawyer or law firm that has filed a lawsuit against her client or to find an attorney in another jurisdiction to assist in a case.

James B. Martindale published his first legal directory in 1868. In 1874 he published *Martindale's United States Law Directory,* a selective listing of attorneys that made no attempt to include complete information on all attorneys. The 1885–1886 biannual edition was renamed *Martindale's American Law Directory.* The first attempt to publish a complete roster of all attorneys in the United States and Canada, this edition listed each attorney and law firm in alphabetical order by state and city and the laws of each state and all Canadian provinces. In 1896 annual publication of the directory began, and a section listing foreign attorneys and law firms was added. The 1896 edition also introduced the basic information format for attorneys that continues to the present: date of birth, date of ADMISSION TO THE BAR, and a rating, if any, of legal ability.

In 1930 the Martindale Company purchased the publishing rights of *Hubbell's Legal Directory* issued by J. H. Hubbell & Company from 1870 to 1930. The company was purchased from Edwin Powell Hubble (a variant spelling of the family name), the astronomer for whom the Hubble Space Telescope is named. The merged publications, renamed the *Martindale-Hubbell Law Directory,* appeared as a two-volume set in 1931.

The size of the directory has grown steadily as more attorneys have joined the profession. In 1948 the directory went to three volumes. By 1968 it had increased to five volumes. The first eight-volume set was published in 1987, and the 1991 edition was made up of 16 smaller volumes. In 1996 the directory consisted of 25 volumes and contained listings for more than 900,000 attorneys and law firms in the United States, Canada, and throughout the world.

The directory is now available on CD-ROM, through LEXIS-NEXIS, and through the Martindale-Hubbell site on the World Wide Web. It has become a standard reference publication for law libraries. The Martindale Company was purchased by Reed Elsevier in 1990 and is part of Reed Reference Publishing.

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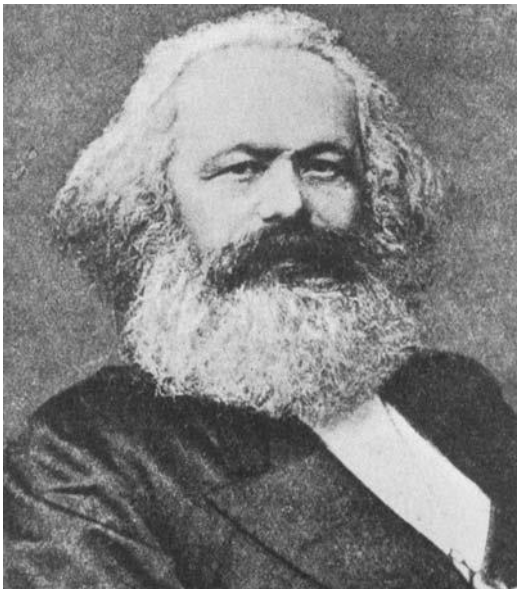
MARX, KARL HEINRICH

Karl Heinrich Marx was a nineteenth-century German intellectual whose works have had great influence on the world. Largely ignored during his lifetime, Marx's writings on economics, politics, social science, and revolution eventually led to the founding of two political movements, SOCIALISM and COMMUNISM. In addition, his views have influenced many legal philosophers.

Marx was born May 5, 1818, in Trier, in what was then the state of Prussia. His father was a successful lawyer. A bright student, Marx studied law at the University of Bonn in 1835. The following year he transferred to the University of Berlin, where he studied philosophy. While at Berlin, Marx joined a group of students and teachers who were opposed to the Prussian government. At that time citizens of Prussia enjoyed few civil liberties and were prevented from participating fully in public affairs.

Marx's political activity proved harmful for his academic career. After obtaining his doctorate in philosophy in 1841, he tried to get a teaching job. The Prussian government barred



Karl Marx.

him from teaching. He then became a freelance journalist.

Following his marriage to Jenny von Westphalen in 1843, Marx moved to Paris. In 1845 he moved to Brussels, where he remained until 1848. In 1848 he returned to Germany to become the editor of a radical paper in Cologne. He used the newspaper to rail against the Prussian government, and he encouraged the German Revolution of 1848, which failed to topple the regime.

During the days leading up to the revolution, Marx first articulated his political and historical theories. In the *Communist Manifesto* (1848), a pamphlet written with his friend Friedrich Engels, Marx argued that history is a series of conflicts between economic classes. He predicted that the ruling middle class would be overthrown by the working class, and a classless society would be created. This classless society would be characterized by the public ownership of all means of economic production. Marx and Engels had previously written *The German Ideology* (1845–46), a 700-page book that dealt in more philosophic terms with economics and politics.

Marx's participation in the failed revolution forced him to flee Germany. In 1849 he settled in London, where he remained for the rest of his life. He and his family lived in abject poverty. He refused to work, except for a stint as a political reporter for the *New York Tribune.* Instead, he spent his time researching at the British Museum library. Friends contributed to his support, especially Engels, who owned a textile manufacturing plant in England. In 1864 Marx founded the International Workingmen's Association, a group dedicated to preparing the way for a socialist revolution. He died in London on March 14, 1883.

Marx spent most of his life in England working on *Das Kapital* (Capital). The first volume was published in 1867, the second and third volumes after his death. He considered *Das Kapital* to be his major work, because it described the functioning of industrial capitalism. Marx saw capitalism as an efficient way of producing wealth, but also saw a fatal flaw in how this wealth was distributed: those who owned the means of production retained most of the wealth, whereas the working class had to get by on fluctuating wages. Marx argued that this inequality would eventually lead the working class to revolt.

Marx's writings had a great effect on the socialist and Communist revolutionary movements of the nineteenth and twentieth centuries. He cast his theories as historically inevitable, providing revolutionaries with a way of explaining the world that appeared to be scientific.

Marxist ideas became the core intellectual tradition for Communist countries in the twentieth century. Social science, history, and philosophy were shaped by his views. U.S. intellectuals generally ignored Marxism until the 1960s, in part because many people believed that it was a subversive political doctrine.

In law, the field of Marxist JURISPRUDENCE has grown significantly. A Marxist analysis of law places more importance on the power of economic forces in society rather than on the concept of an impartial, neutral RULE OF LAW. Marxists believe that the material forces of a society and those that control these forces shape the society's legal system.

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v MASON, GEORGE

George Mason was an eighteenth-century statesperson who in 1776 wrote the Declaration of Rights for the State of Virginia and who later helped write the U.S. Constitution. Mason was a champion of liberty whose opposition to SLAVERY and a strong federal government led him to refuse to sign the Constitution.

Mason was born on October 7, 1725, in Fairfax County, Virginia, the son of a wealthy commercial and agricultural family. Mason studied law but was primarily a plantation owner and real estate speculator. He was a neighbor of GEORGE WASHINGTON. Mason was deeply interested in western expansion, and in 1749 he became a member of the Ohio Company, which developed land and trade on the upper Ohio River.

At about this time, Mason helped found the city of Alexandria, Virginia. Because he suffered from chronic poor health, Mason avoided public office, serving only a short time in the Virginia House of Burgesses. Yet he did not shun the political debate over British interference with the colonies. British attempts at taxing and controlling the colonies through the STAMP ACT of 1765 and the TOWNSHEND ACTS led many colonial leaders to consider political independence.

In 1775 Mason attended the Virginia convention, where he helped write most of the Virginia constitution. In June 1776 he wrote the VIRGINIA DECLARATION OF RIGHTS. THOMAS JEFFERSON was probably familiar with Mason's concepts and language when he wrote the Declaration of Independence later that year, and other states soon copied Mason's work. French revolutionaries also showed they had been influenced by

George Mason.
GETTY IMAGES

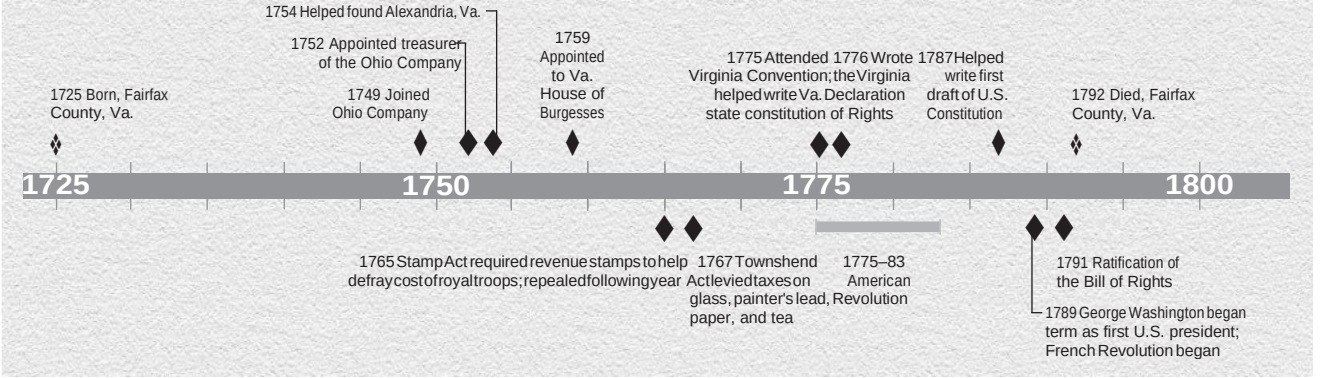
Mason's declaration in their Declaration of the Rights of Man, which was composed in 1789.

The Virginia Declaration of Rights stated that government derived from the people, that individuals were created equally free and independent, and that they had inalienable rights that the government could not legitimately deny them.

As a delegate to the Constitutional Convention of 1787, Mason was called on to write part of the first draft. By the end of the convention,

> OUR ALL IS AT STAKE, AND THE LITTLE CONVENIENCES AND COMFORTS OF LIFE, WHEN SET IN COMPETITION WITH OUR LIBERTY, OUGHT TO BE REJECTED NOT WITH RELUCTANCE BUT WITH PLEASURE.
> —GEORGE MASON

George Mason 1725–1792



however, he had become deeply alienated by the result. Although he came from a slaveholding state, Mason opposed slavery on both moral and economic grounds. He sought an end to the slave trade and the manumission of all slaves. Instead, the Constitution allowed the slave trade to continue for 20 years, and it said nothing about the institution of slavery.

Mason also objected to the lack of provision for individual rights, believing that the Constitution gave too much power to the federal government. His criticism contributed to the enactment and ratification of the BILL OF RIGHTS in 1791, portions of which were modeled on Mason's Declaration of Rights. Mason died on October 7, 1792, at his estate in Fairfax County, Virginia.

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v MASON, JOHN YOUNG

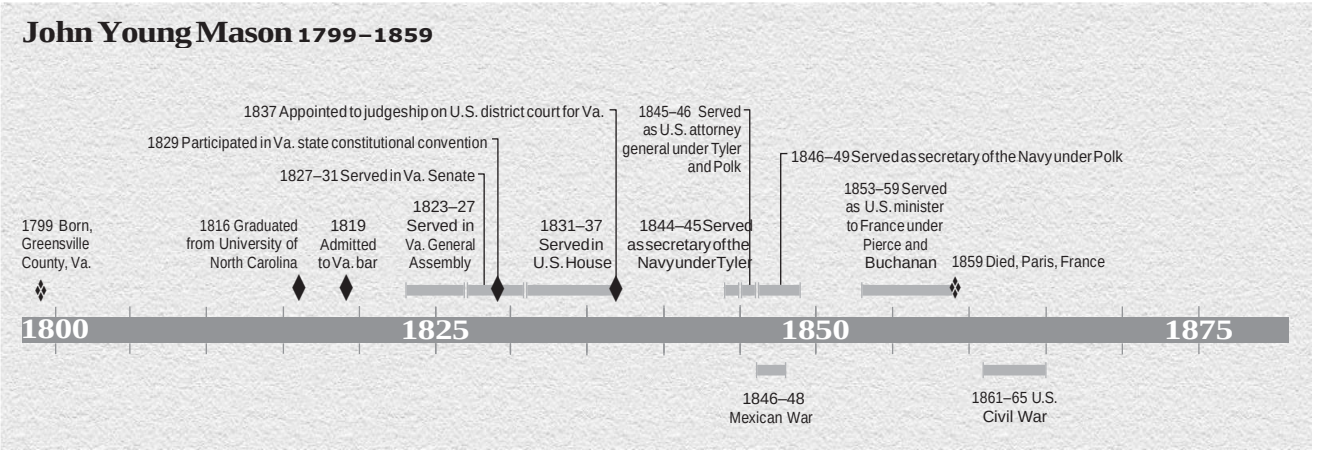
John Young Mason served as a U.S. attorney general under President JAMES POLK. He was secretary of the Navy during the Mexican War, chair of the House committee on foreign affairs, and an ambassador to France. While serving as ambassador, Mason was one of three U.S. ministers to sign the Ostend Manifesto, a written proposal to buy or seize Cuba from Spain that was later dismissed as an effort to extend SLAVERY in the United States.

Mason was born in Greensville County, Virginia, on April 18, 1799. His father was Edmunds Mason, and his mother was Frances Ann Young Mason. His grandfather was Captain James Mason of the Fifteenth Virginia Line. Mason graduated from the University of North Carolina in 1816 and attended the law school at Litchfield, Connecticut, for three years. In 1819 he was admitted to the Virginia bar and began practice at Hicksford in Greensville County.

In 1822 Mason moved to Southampton County, Virginia, and began a law practice that quickly became lucrative. In 1823 he was elected as a Democrat to the Virginia General Assembly, where he served until 1827. He served in the Virginia Senate from 1827 to 1831. Mason was also a member of the 1829 state constitutional convention.

In 1831 Mason was elected to the U.S. House of Representatives. While serving as a representative, Mason supported most of President Andrew Jackson's measures. He refused to vote to recharter the National Bank, even when the Virginia General Assembly pressed him to do so. As chair of the House committee on foreign affairs, Mason introduced a bill recognizing independence for Texas. He also supported naval preparedness during a time of adversarial relations between the United States and France. Mason served in the House until 1837, when he accepted a position as judge of the U.S. district for Virginia.

President JOHN TYLER appointed Mason secretary of the Navy in March 1844, and President Polk appointed Mason attorney general in 1845. Mason was the only member



of Tyler's cabinet to be retained by the new president. He served as attorney general until 1846 when Polk reappointed him as secretary of the Navy. He served in that position until 1849.

Mason was secretary of the Navy during the years of the Mexican War. Although he was an expansionist, he opposed incorporating Mexico into the United States and supported U.S. acceptance of the treaty signed with Mexico.

At the end of the Polk administration, Mason returned to his law practice in Richmond. He was elected president of the James River and Kanawha Company in 1849 and became an active advocate of efforts to rapidly extend the canal system in Virginia. In the 1852 presidential campaign, Mason publicly supported FRANKLIN PIERCE.

In 1853 President Pierce appointed Mason U.S. minister to France. In 1854, at the request of Secretary of State William L. Marcy, Mason met with JAMES BUCHANAN, U.S. minister to Great Britain, and Pierre Soulé, U.S. minister to Spain, in Ostend, Belgium, to discuss the issue of Cuban uprisings. During this period U.S. leaders were bitterly debating the circumstances under which slavery should or should not be extended into new states. On October 18, 1854, Mason, Buchanan, and Soulé—who were pro-slavery—signed the Ostend Manifesto, a secret document proclaiming that Spain should sell Cuba to the United States and that, if it refused to do so, the United States had the right to take the island by force. The press published the document and ridiculed it as a clumsy plot to add new slave territory to the United States. Marcy subsequently dismissed the document on behalf of the Pierce administration.

Mason was reappointed U.S. minister to France when Buchanan became president, and he remained in that position, living abroad, until his death in Paris on October 18, 1859.

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MASS COMMUNICATIONS LAW

A body of primarily federal statutes, regulations, and judicial decisions that govern radio; broadcast, cable, and satellite television; and other means of electronic communication.

Since the introduction of the radio in the early twentieth century, sophisticated technological devices have been developed to facilitate the transmission of ideas, information, and entertainment throughout the United States and the world. The federal government has taken an active role in regulating the means of communication that involve the interstate transmittal of information. Government regulation was needed in order to create a coherent plan for radio and television broadcasting and to ensure that these facilities are used responsibly. The passage of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, however, signaled a decline in government regulation. This massive deregulation allowed companies involved with mass communications to compete and to combine more freely.

Early History

Government regulation of radio began in 1910, at a time when radio was regarded primarily as a device to bring about safe maritime operations and as a potential advancement in military technology. Persons seeking to use radio frequencies would register with the COMMERCE DEPARTMENT to have a frequency assigned to them. During WORLD WAR I, entrepreneurs began to recognize the commercial possibilities of radio.

By the mid 1920s commercial radio stations were operating, and the secretary of commerce set aside frequencies for commercial application. The regulatory powers of the secretary were uncertain because the secretary was authorized under law only to record applications and to grant frequencies. The Federal Radio Commission was created in 1927 to assign applicants designated frequencies under specific engineering rules and to create and enforce standards for the broadcasters' privilege of using the public's airwaves.

The commission later became the FEDERAL COMMUNICATIONS COMMISSION (FCC), which was established by the Communications Act of 1934 (47 U.S.C.A. §§ 151 et seq.). The 1934 act set out a regulatory structure that would govern mass communications law for more than 60 years, with the FCC as the governing regulatory body. The law also made clear that the federal government has sole jurisdiction over modern mass communication.

The FCC

The FCC establishes the requirements for the licensing of stations and sets up a framework that tries to ensure some competition for licenses. It allows the free market to determine such matters as advertising costs, expenses, cost of equipment, and choice of programming by broadcasters.

In addition to regulating commercial and educational broadcasting, the FCC has pervasive power to govern nonbroadcast use of communications facilities, such as interstate commerce carrier systems, radio systems for truck-to-truck communication, taxicab networks, marine and ship radio, aviation frequencies, citizens band (i.e., CB) radio, international "ham" communication, police and fire communications networks, and cable and satellite television. All radio stations owned and operated by the United States, however, are exempt from regulation by the FCC.

The FCC may not decide whether a particular advertising message is false or misleading. This subject matter is delegated by law to the FEDERAL TRADE COMMISSION (FTC). The FCC can act when a licensee continues to broadcast an advertisement that the FTC has determined to be false and misleading. The FCC does not set advertising rates or oversee ordinary and usual business practices, such as production charges, commission arrangements, and salaries of artists.

Although government regulation of broadcasting appears to conflict with the First Amendment's guarantee of FREEDOM OF SPEECH and FREEDOM OF THE PRESS, such regulation is often justified in terms of the limited number of available broadcast frequencies. Unlike the print media, which can physically coexist in the same community at the same time, broadcasting requires the government to make a choice between two or more potential broadcasters that wish to use the same broadcast space. In broadcasting, two or more radio or television stations cannot physically operate on the same frequency, because neither would be heard. Because it is important to the general public that someone be heard, the FCC must choose who that will be.

The FCC is not always faced with the necessity of choice. Only one broadcaster might apply for a particular open frequency. The FCC must determine, no matter how many applicants, whether a potential broadcaster has the proper qualifications and whether it will operate "in the public interest" before the applicant will be permitted to broadcast.

Licensing

Congress has devised a procedure by which broadcasters are granted an exclusive right or license to broadcast over a particular frequency for a statutory maximum number of years. Under the Telecommunications Act of 1996, new licenses and renewals are granted for eight years. The FCC classifies different types of stations and the particular services they provide, and it assigns the band of frequencies for each individual station. The three sets of broadcast frequencies are the AM band, the FM band, and a third set used for television. Licenses are issued only on a showing that public convenience, interest, and necessity will be served and

that an applicant satisfies certain requirements, such as citizenship, character, financial capability, and technical expertise.

Citizenship A noncitizen, foreign government, or corporation of which any officer or director is an alien, or where more than one-fifth of the stock is owned by ALIENS or representatives of foreign governments, may not receive a broadcasting license. These restrictions are mandatory, and the FCC may not waive them. Only Congress may pass legislation making an exception to the citizenship rule. There are no similar restrictions on foreign ownership of CABLE TELEVISION systems.

Character Applicants must possess the essential character qualifications of honesty and candor. However, the FCC evaluates the applicant based on information that the applicant provides. The FCC relies on the honesty of applicants because it has neither the staff nor the budget to verify the representations made by license applicants or its licensees. Any intentional MISREPRESENTATION by an applicant will seriously jeopardize the license application, regardless of the significance of the matter.

A license may be denied for violations of CRIMINAL LAW, but disqualification does not automatically occur for minor offenses. An applicant that has been convicted of violating federal regulatory laws in a business not involving communications might have a license application denied because the conviction indicates an intentional disregard for government regulations.

When faced with a choice between an applicant against whom no character question is raised, and one who has violated a law, but not one that results in an automatic denial, the FCC is most likely, all other considerations being equal, to grant the license to the non-lawbreaker.

Financial Qualifications An applicant must demonstrate the financial capability to construct and operate the proposed facility for one year. If the person intends to rely on anticipated revenue, he or she must file evidence that these revenues will, in fact, be earned. Such evidence may include affidavits from prospective advertisers indicating their plan to contract with the station for advertising time.

An applicant who wants to buy an existing profit-making station need only show the financial ability to maintain operations without revenues for the first three months. A station that has earned profits in the past is considered to be likely to continue to earn profits in the future. Where a station that is already in financial difficulty is being sold, the applicant-purchaser must demonstrate a capability to produce a profit in the first year of operation.

Technical Expertise A broadcaster must comply with all of the technical requirements imposed by the FCC, such as the use of transmitting equipment that is the type approved by the FCC and the operation of broadcast facilities during the hours appropriate for the frequency sought.

Ownership of More Than One Station Before 1996, the FCC enforced its "multiple-ownership rule," which restricted persons or entities from acquiring excessive power through ownership of a number of radio and television facilities. The rule was based on the assumption that if one person or company owned most or all of the media outlets in an area, the diversity of information and programming on these stations would be restricted. The rule meant that a single entity could not own more than one station in the same market, such as two AM stations in the same community, or in adjacent communities when the stations' signals would overlap to a certain designated extent. In addition, the FCC restricted the total number of licenses that one entity could own to 12 AM, 12 FM, and seven television stations anywhere in the United States.

The Telecommunications Act of 1996 eliminated the restrictions limiting the number of AM and FM stations that one entity may own nationally. The FCC was directed to reduce the restrictions on locally owned AM and FM stations as well. The act eliminated the restriction on the number of television stations that an entity may own directly or indirectly and increased the ceiling on permissible national audience reach from 25 percent to 35 percent. The FCC was directed to permit entities to have cross-ownership in network and cable systems. The act also removed the prohibition on cable operators from owning or controlling local television broadcast systems.

The FCC went one step further in 2007 when it implemented new regulations that allow broadcasters in the 20 largest U.S. cities to also own a newspaper. The commission had issued a similar rule in 2003, but a federal court had struck it down. Under the 2007 regulations, the

FCC also granted permanent waivers to 42 newspaper-broadcast combinations in large and small markets that had been given temporary waivers as they awaited the commission's decision. The commission also approved new local television multiple-ownership limits that were part of the 2003 rules. In markets where there were at least five stations, a company could own two stations; a company could own three TV stations where there were 18 or more stations.

Procedure for Obtaining a License

A license can be granted without a hearing. Where there are substantial and material questions of fact, or the FCC does not find that the issuance of a license would be in the PUBLIC INTEREST, a hearing must be held to review the application. Other broadcast stations might intervene in the application process, particularly where a grant of a license to another applicant could affect their licenses or seriously impair their economic well-being. In cases of such intervention, a hearing is usually required.

Representatives of the public can participate in the licensing process where a grant of a license would have a particular, definable effect upon them. A citizen may not participate by merely asserting a general listenership interest without alleging a specific injury to himself or herself. A representative group that suffers a particular injury may file a petition with the FCC to deny the application. If there is a substantial or material QUESTION OF FACT, a hearing is justified.

In the context of radio licenses, a radio spectrum refers to the range of frequencies that are used by radio waves for communication. The FCC apportions these frequencies and allows parties exclusively to use frequencies with a specific geographic location. Since 1994, the FCC has held spectrum AUCTIONS, which allow competitors to bid on the assignment of licenses for an electromagnetic spectrum. The auction is open to any eligible company or individual who submits an application and upfront payment and is found to be a qualified bidder by the commission. The auction is conducted electronically over the Internet.

License Renewal and Revocation

A broadcasting entity must renew its license during the time set by statute to continue operating on that frequency, and no guarantee exists that such renewal is automatic.

A license is revocable during its term, but the FCC must notify the licensee and give it a full opportunity to be heard prior to revocation. There must be reasonable grounds to warrant revocation of the license. The FCC decision must be embodied in written findings that contain a full explanation of its reasoning and actions. Such decisions are reviewable by the U.S. Court of Appeals for the District of Columbia.

Regulation of Licensees

Although the primary responsibility of the FCC is the licensing of broadcasting stations, it also regulates, to a certain extent, the manner in which stations operate.

Political Broadcasts Congress has long recognized the potential of using various broadcast media to influence the outcome of an election. A candidate with access to broadcasting facilities has a greater chance of reaching more voters than does a candidate who lacks such access. Congress has mandated that any licensee that permits a legally qualified candidate for public office to use its facilities to campaign must give all other candidates for that position equal opportunities to use the broadcast station. This requirement, sometimes called the "equal-time doctrine," does not apply to news broadcasts or advertisements on behalf of the candidate in which the candidate does not appear.

Equal rates must be charged to each candidate. During election campaigns, candidates must be given the "lowest unit charge" that is offered by the station to commercial advertisers for comparable time. The FCC is the regulatory agency that ensures licensee compliance with this law. Stations may not censor political advertisements, even if the candidate makes LIBELOUS or scandalous charges. Stations may not be sued, however, for libel or slander based on a candidate's remarks.

When a licensee either endorses or opposes a legally qualified candidate in an editorial, the other candidate must be notified within 24 hours of the date and time of the editorial, must be given a script or videotape or audio tape of the editorial, and must be furnished with a reasonable opportunity to respond. If the editorial is broadcast within 72 hours of the election, the licensee must provide the material

within sufficient time prior to the broadcast to enable candidates to have a reasonable opportunity to present a reply. These requirements exist only when a station endorses a particular candidate. They do not apply to editorials on public issues, such as funding for public education.

The FCC has developed a "quasi equal opportunity doctrine" that governs appearances by representatives for candidates who are not covered by the equal-time doctrine. When supporters of a candidate purchase time from a broadcaster during an election campaign, the licensee must make comparable time available to the supporters of the opponent.

Fairness Doctrine From 1959 to 1987 the FCC enforced the "fairness doctrine," which required that broadcasters provide reasonable opportunity for the discussion of opposing views on controversial issues that affect the public. The doctrine proved controversial, and in 1987 the FCC rescinded it, concluding that it was a restriction on the FIRST AMENDMENT and that the growth of electronic media provided adequate means for presenting diverse opinions on issues of PUBLIC POLICY.

Personal Attack Rule Although the FCC repealed the FAIRNESS DOCTRINE, it left intact the "personal attack rule," which is an aspect of the fairness doctrine that concerns the right of a person who has been criticized in a broadcast to gain access to the broadcast facility to defend herself or himself. When, during the presentation of views on a controversial issue of public importance, the honesty, character, or integrity of an identified person or group is impugned, the licensee must, within one week after the attack, notify the subject of the attack of the date, time, and identification of the broadcast and must provide a script or videotape or audio tape of the attack and a reasonable opportunity to reply using the licensee's facilities. This rule does not apply to attacks on foreign groups or foreign public figures, or to personal attacks made by legally qualified candidates, their authorized representatives, or persons associated with them. Attacks occurring during bona fide newscasts, news interviews, or on-the-air coverage of bona fide news events are not covered by the personal attack rule.

This rule does not cover every personal attack carried on a station—only personal attacks broadcast during the presentation of views on a controversial issue of public importance. A person who is attacked at some other time will have no redress from the FCC but might have grounds to seek relief under the law governing LIBEL AND SLANDER. If the personal attack rule is applicable, the person who has been attacked has an absolute right to appear in his or her own defense, and the station may not require that a different person make the defense.

Broadcasting Content Unlike print media, radio and television broadcasts may be regulated for content. Typically this practice has involved broadcasts of allegedly obscene or indecent material. The U.S. SUPREME COURT has upheld regulations banning obscene material because OBSCENITY is not protected by the First Amendment. It also has permitted the FCC to prohibit material that is "patently offensive," and either "sexual" or "excretory," from being broadcast during times when children are presumed to be in the audience (*FCC v. Pacifica Foundation,* 438 U.S. 726, 98 S. Ct. 3026, 57 L. Ed. 2d 1073 [1978]). The courts rejected FCC attempts to interpret the indecency standard more broadly. Congressional legislation that expanded the standard also was ruled unconstitutional.

The Telecommunications Act of 1996 contained the Communications Decency Act (CDA), codified at 47 U.S.C.A. § 223 (a) to (h), which makes it a federal crime to use telecommunications to transmit "any comment, request, suggestion, proposal, image, or other communication which is obscene or indecent, knowing that the recipient of the communication is under 18 years of age, regardless of whether the maker of such communication placed the call or initiated the communication." A three-judge panel, in *American Civil Liberties Union v. Reno,* 929 F. Supp. 824 (E.D. Pa. 1996), found that the CDA was unconstitutional because it violated the First Amendment. The U.S. Supreme Court later upheld the decision in *Reno v. American Civil Liberties Union,* 519 U.S. 1025, 117 S. Ct. 554, 136 L. Ed. 2d 436 (1996).

The FCC began to aggressively suppress obscenity on broadcast television in 2003. It had a long-standing policy against the use of indecent language, but it did not prosecute one-time occurrences. The commission rethought its position after presenters and award-winners appeared on a series of television awards shows

in 2002 and 2003. It made three significant findings in changing the policy: (1) bleeping/delay systems technology had advanced; (2) the F-Word and the S-Word always invoke a coarse excretory or sexual image, making it irrelevant whether a word was used as an expletive or a literal description; and (3) the new policy's "contextual" approach to indecency was better than the previous "categorical" approach, which offered broadcasters virtual IMMUNITY for the broadcast of fleeting expletives.

In 2003 the FCC filed a notice of apparent liability against the Fox network for allowing Cher to use the F-Word on a music awards show and for allowing Nicole Richie to utter both the F- and S-Words. The network challenged the new policy, but the Supreme Court, in *Federal Communications Commission v. Fox Television Station*, U.S., 129 S.Ct. 1800, L.Ed.2d (2009), held that the policy was legitimate.

The Telecommunications Act of 1996 also mandated the establishment of an advisory committee to rate video programming that contains indecent material, in order to warn parents of its content. The act also required that by 1998, all manufactured televisions with screens 13 inches or larger must be equipped with a "V-chip" to allow parents to block programs with a predesignated rating for sex and violence.

Public Broadcasting

Public broadcasting systems are noncommercial television and radio stations that are financed by viewer and private contributions, in addition to funding by federal, state, and local governments, as an alternative to the programming aired by commercial channels. The Corporation for Public Broadcasting, a private, independent, nonprofit corporation established in 1967 by the Public Broadcasting Act (47 U.S.C.A. §§ 390 et seq.), is also involved in the creation and development of public stations.

Cable Television

Cable television has grown tremendously since the 1980s. By 1996 it was available to more than 96 percent of U.S. homes, and 60 percent were subscribers to cable. Cable originally served communities in mountainous regions that had difficulty receiving broadcast transmissions. Many communities solved this problem by erecting tall receiving towers at the highest point in the area to capture broadcast signals and retransmit them over wires running from the tower to various homes that subscribed to this service. This service is called "community antenna television system," popularly known as "CATV," or "cable television."

During the 1970s and 1980s, large corporations installed cable systems in every large metropolitan area in the United States, as well as in rural areas. Independent programming was transmitted on cable systems by companies such as Home Box Office (HBO) and Cable News Network (CNN).

The FCC adopted the first general federal regulation of cable systems, although cable television could not be categorized as broadcasting in the traditional sense. Local government also became involved because each municipality had to award a cable system franchise to one vendor. Cable operators negotiated system requirements and pricing with local governments. Concerns about rate regulation led Congress to enact the Cable Television CONSUMER PROTECTION and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460. The act gave the FCC greater control of the cable television industry, mandated improved customer service, and sought to improve the competitive position of broadcast stations. It also set rate structures to control the price of cable subscriptions. However, the Telecommunications Act of 1996 reversed the 1992 act by ending all rate regulation. This meant that cable operators were free to charge what they wished.

Congress deregulated cable television rates in part because of increased interest by telephone companies to enter the cable market by sending programming through existing phone lines. The 1996 act permits phone companies to provide video programming directly to subscribers in their service areas. Congress believed that competition between phone companies and cable operators would improve service and hold down subscription rates.

New Technology

The development of satellite, direct broadcast television, broadband Internet access, and wireless technologies, along with the continued development of other Internet technologies, has demonstrated the continued vitality of electronic communications technologies. The 1996 act

Cable TV and the "Must Carry" Law

Since the 1970s the Federal Communications Commission (FCC) has required cable television systems to dedicate some of their channels to local broadcasting stations. For many years cable operators did not challenge the constitutionality of these "must carry" provisions, believing that compliance was necessary to obtain operating licenses. With the dramatic growth in the cable industry, however, cable operators argued that they should be able to use these channels for more profitable programming. In the late 1980s, as a result of challenges by cable operators, the courts struck down must carry rules as a violation of the First Amendment.

Congress replied in the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C.A. § 151 et seq.), providing that cable systems with twelve or fewer channels must carry at least three local broadcast signals and that larger systems must carry all local signals up to a maximum of one-third of the system's total number of channels.

Turner Broadcasting System, a leading cable operator, filed suit, claiming that the must carry law violated the First Amendment by suppressing and burdening free speech. The Supreme Court, on a 5–4 vote, in *Turner Broadcasting System v. FCC,* 117 S. Ct. 1174 (1997), rejected these arguments, finding that Congress had substantial evidence to justify the must carry provisions and that the provisions advanced important governmental interests unrelated to the suppression or burdening of free speech.

The Court noted that the must carry provisions preserve the benefits of free, over-the-air local broadcast television, promote the widespread dissemination of information from many sources, and advance fair competition in the television programming market. The Court was reluctant to abandon the law when 40 percent of U.S. households still rely on over-the-air signals for television programming. The Court found that when local broadcasters are denied cable access, audience size and advertising revenues decline, station operations are restricted, and bankruptcy may result.

Conversely, the Court determined that the must carry provisions had not burdened cable operators, with the vast majority unaffected in a significant manner. Most systems had enough channels to accommodate local stations and their own programming. Therefore, Congress had not overstepped the First Amendment in mandating the must carry requirement.

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moved toward deregulation and competition as ways of exploring the new and emerging vehicles of mass communications.

The FCC has continued to revise its regulations in order to ensure that they remain applicable to these new technologies. The new millennium saw a rise in the use of digital subscriber lines (DSL) and cable to provide broadband Internet access. However, cable and DSL have been somewhat limited to larger geographic areas. In smaller, rural areas, some providers have sought to provide broadband access through wireless technologies. In 2002 the FCC relaxed its regulations relating to the frequencies used by these wireless technologies. The regulations were designed to add flexibility for these wireless broadband providers to further develop these technologies.

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MASSACHUSETTS CONSTITUTION OF 1780

In 1630 John Winthrop and his associates in the Massachusetts Bay Company established the Great and General Court of Massachusetts to provide a form of local government for the Puritans who had settled the Boston area. During the American Revolution, the General Court produced an initial draft of a state constitution for Massachusetts. The citizens of Massachusetts refused to accept this constitution as law, however, due to their nonparticipation in the process by which it was formed; instead they elected representatives to meet at a constitutional convention to determine the nature of their government. In 1779 the representatives convened in Cambridge and designated JOHN ADAMS to be the primary drafter of the constitution. This constitution was ratified in 1780.

Among the terms of the Massachusetts Constitution of 1780 is the provision that empowers the governor and his or her council or the legislature to obtain ADVISORY OPINIONS from the Supreme Judicial Court on questions relating to the scope of the power of the governor or legislature of the Commonwealth. Presently Massachusetts is the only one of the thirteen original states that has retained its first constitution. The constitution has, however, been subject to numerous amendments, the most extensive of which were made by the Massachusetts Constitutional Convention that was convened from 1917 to 1919.

MASSACHUSETTS TRUST

A business arrangement that is used in place of a corporation or partnership in which trustees hold title to property for the advantage of beneficiaries for investment purposes.

A Massachusetts trust is another name for a *common-law trust* or a BUSINESS TRUST, which offers its beneficiaries limited financial liability in transactions in which it engages.

MASSIAH V. UNITED STATES

In *Massiah v. United States,* 377 U.S. 201, 84 S. Ct. 1199, 12 L. Ed. 2d 246 (1964), the Supreme Court held that in addition to the RIGHT TO COUNSEL at the trial stage, the SIXTH AMENDMENT also affords a defendant the right to legal counsel in pretrial stages. The Court held that this right attaches once the accused has been indicted and that the accused is protected from deliberate elicitation of information, including face-to-face encounters with police officers and approaches by unknown government informants.

Winston Massiah was a merchant sailor who was arrested, arraigned, and indicted for possession of narcotics and for conspiring to possess narcotics aboard a U.S. vessel and to import, conceal, and facilitate the sale of narcotics. Massiah retained a lawyer, pleaded not guilty, and was released on bail. One of the accused coconspirators, Jesse Colson, also retained a lawyer and pleaded not guilty. A few days later, unbeknownst to Massiah, Colson decided to cooperate with the government. Colson and Massiah met in Colson's automobile where Massiah made several incriminating statements during the course of their conversation. A radio transmitter had been secretly installed under the front seat of Colson's car, and a government agent listened to and recorded the conversation. At trial Massiah's incriminating statements were admitted into evidence, and the jury convicted him of several narcotics offenses.

The *Massiah* Court held that Massiah's basic protections of the Sixth Amendment were violated when his statements were surreptitiously and "deliberately elicited from him after he had been indicted and in the absence of his counsel." In essence, the *Massiah* doctrine activates the Sixth Amendment right to counsel once the criminal suspect reaches the status of accused and restricts the use of covert tactics by the government in obtaining incriminating evidence.

Since announcing the *Massiah* doctrine, the Supreme Court has attempted to limit its effect by requiring the accused to show that the government participated in active interrogation. The cases that follow *Massiah* help determine what constitutes active interrogation.

The Supreme Court held that when an inmate working for the government actively prompts an accused to make incriminating statements, this involves active interrogation and is a violation of the accused's Sixth Amendment right to counsel (*United States v. Henry,* 447 U.S. 264, 100 S. Ct. 2183, 65 L. Ed. 2d 115 [1980]). However, when a government agent passively listens to the accused's incriminating statements, there is no violation of the accused's Sixth Amendment right to counsel (*Kuhlmann v. Wilson,* 477 U.S. 436, 106 S. Ct.

2616, 91 L. Ed. 2d 364 [1986]). In *Kuhlmann,* the Court held that, to prove a violation of the Sixth Amendment, "the defendant must demonstrate that the police and their informant took some action, beyond merely listening, that was designed deliberately to elicit incriminating remarks."

The *Massiah* doctrine effectively limits the types of tactics law enforcement may use in obtaining evidence. Under this doctrine once formal charges have been initiated, the right to counsel attaches and law enforcement may not elicit information, either face-to-face, covertly, or through an undercover agent, without the presence of an attorney.

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Criminal Law; Criminal Procedure.

MASTER

An individual who hires employees or servants to perform services and who directs the manner in which such services are performed.

A court officer appointed by a judge to perform such jobs as examining witnesses, taking testimony, computing damages, or taking oaths, affidavits, or acknowledgments of deeds.

A master makes a report of his or her findings to the judge so a decree can be formulated. A *master in chancery* was an officer in Chancery Court in England. In the U. S. these duties may be rendered by a court clerk, commissioner, auditor, or referee.

MASTER AND SERVANT

An archaic generic legal phrase that is used to describe the relationship arising between an employer and an employee.

A *servant* is anyone who works for another individual, the *master,* with or without pay. The master and servant relationship only arises when the tasks are performed by the servant under the direction and control of the master and are subject to the master's knowledge and consent.

A servant is unlike an agent, since the servant has no authority to act in his or her employer's place. A servant is also distinguishable from an INDEPENDENT CONTRACTOR, who is an individual entering into an agreement to perform a particular job through the exercise of his or her own methods and is not subject to the control of the individual by whom he or she was hired.

The master and servant relationship arises out of an express contract; the law, however, will sometimes imply a contract when none exists if a person was led to believe there was one by the conduct of both the employer and the employee. No contract exists, however, unless both master and servant consent to it. The contract can contain whatever terms and conditions the parties agree to, provided they are legal. It is essential that the terms be sufficiently definite so as to be enforceable by a court in the event that the contract is breached. An employment contract is legally enforceable by the award of damages against either party who breaks it. No employment contract, however, can be enforced by compelling the employee to work, because that would constitute INVOLUNTARY SERVITUDE, which is proscribed by the U.S. Constitution.

Federal and state laws regulate certain conditions of employment, such as minimum wages, maximum hours, overtime pay, time off for religious observances, and the safety of the work environment. Statutes ordinarily restrict employment of children, and federal CIVIL RIGHTS laws prohibit employment discrimination based upon race, color, religion, sex, or national origin. Employment agencies are generally licensed and regulated, due to the risk that dishonest agencies might come into existence.

Duties of Master and Servant

The general rule is that a master may hire and fire servants; however, this is limited to a certain extent by the law. An employee cannot be discharged for a reason not permitted by his or her employment contract or the collective bargaining agreement that may govern the employment; nor can the person be fired

because of race, color, religion, sex, or national origin. In addition, an employer cannot fire an employee who is exercising certain rights, such as filing a discrimination complaint with a governmental agency or filing for worker's compensation benefits.

An employee can be discharged for misappropriating funds, being unfaithful to his or her employer's interest, refusing to perform services that were agreed upon in a contract, or for being habitually late or absent. An employee cannot be fired for insubordination for refusing to subscribe to unlawful directives from his or her employer, nor can the employee be required to perform such illegal tasks as committing perjury or handling stolen property. A suit for damages may be brought against an employer who wrongfully discharges an employee.

An employee has the obligation to be honest and faithful in the performance of duties. When trade secrets are disclosed to an employee, he or she must not reveal them to others either prior or subsequent to employment. In some cases, an employment contract specifies that the employer owns any new ideas or inventions created by the employee during the period of employment. When this is true, the employee has no rights in the idea or invention nor any right to ask for additional compensation.

Compensation

An employee can enter into an agreement to work without compensation, but in the absence of such an agreement, an employer must pay an employee at the agreed rate. The employer cannot delay payment of wages or substitute something other than money unless the employee assents. The employee is entitled to his or her wages as long as the work is completed. If an employer wrongfully discharges an employee, the employee can collect all the money the employer had agreed to pay him or her.

The amount and type of compensation is ordinarily regulated by agreement; however, it is affected by a number of statutes. Employers are required to pay at least a certain prescribed MINIMUM WAGE under most state laws, which must be no less than the amount set by federal law, unless it is a type of employment that is excluded under the law or the employer is small enough in size to be exempt from the minimum wage laws. Other state and federal laws mandate employers to allow for paid sick time and additional wages for overtime or holiday work. It constitutes a violation of federal law, the Equal Pay Act (29 U.S.C.A. § 206 [1963]) to pay men and women different wages for substantially similar work. Special laws protect INFANTS (individuals under the age of majority) by restricting the hours they can work at certain ages and proscribing their employment in certain kinds of jobs.

CROSS REFERENCES

Child Labor Laws; Employment at Will; Employment Law; Labor Law; Labor Union.

MATERIAL

Important; affecting the merits of a case; causing a particular course of action; significant; substantial. A description of the quality of evidence that possesses such substantial PROBATIVE *value as to establish the truth or falsity of a point in issue in a lawsuit.*

A *material fact* is an occurrence, event, or information that is sufficiently significant to influence an individual into acting in a certain way, such as entering into a contract. In formal court procedures, a material fact is anything needed to prove one party's case, or tending to establish a point that is crucial to a person's position.

A *material issue* is a question that is in dispute between two parties involved in litigation, and that must be answered in order for the conflict to be resolved.

A *material witness* is a person whose testimony is a necessary element of a lawsuit. An individual who is considered a material witness can be compelled to appear in court and provide testimony. In the event that the person's safety is endangered as a result of his or her planned or actual testimony, he or she may be given legal protection or held in PROTECTIVE CUSTODY.

MATHEWS V. ELDRIDGE TEST

A three-part test that determines whether an individual has received DUE PROCESS *under the Constitution. The test balances (1) the importance of the interest at stake; (2) the risk of an erroneous deprivation of the interest because of the procedures used, and the probable value of additional procedural safeguards; and (3) the government's interest.*

Decisions by the Supreme Court in the 1960s enhanced the due process rights of individuals under both the Fifth and Fourteenth Amendments. Aggrieved individuals used these precedents to litigate various issues involving the termination of employment, government benefits, professional licensure, and other interests involving ADMINISTRATIVE LAW matters. As a result, the Supreme Court had to sort out how much process was enough to constitute due process. The Court resolved this issue in *Mathews v. Eldridge,* 425 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), when it announced a three-part BALANCING test that lower courts must apply when analyzing procedural due process cases.

In *Mathews,* the plaintiff accused the federal government of terminating his SOCIAL SECURITY disability benefits without an evidentiary hearing prior to termination. The claim was that the administrative procedures in place by the government violated his constitutional right to due process. The Court acknowledged that the receipt of benefits was an important private interest, which satisfies the first part of the test focusing on whether or not a private interest is at stake. Later court decisions have shown that this part of the test is subjective, calling on courts to make judgment calls on the relative merit of the interest at stake.

The second part of the test assesses the risk of the possibility that a person will be mistakenly deprived of the interest because of the need for additional or different procedural safeguards. If the risk of error is minimal, then the need for additional procedures declines. If the risk is high then additional procedures would be merited. Government agencies also may reduce the risk of erroneous deprivation by ensuring that regulations are not ARBITRARY or discriminatory, and by defining reasonable classifications. In *Mathews,* the Court ruled that administrative procedures that were in place did not violate due process rights; the plaintiff was offered several methods to address the termination of benefits, but did not choose to employ them.

The final part of the test deals with the government's interest. The *Mathews* court, however, made it clear that in addition to interest, administrative burdens also must be factored into the analysis. If the need for enhanced due process is merited by the need to assure individuals that administrative actions are just, then administrative costs should not be considered. However, if the costs of the additional procedures outweigh the benefits, then the government should not be required to use additional resources. The courts give "substantial weight to the good-faith judgments" of officials charged with government administration. In *Mathews*, the Court ruled that an evidentiary hearing was not required prior to the termination of benefits and, therefore, the government's administrative procedures did not violate his due process rights.

Some commentators have criticized the three-part test as too subjective and impressionistic, allowing judges to impose their personal values on the relative worth of private and government interests. For example, in its ruling in *Mathews* the Court commented that "the fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Such undefined terminology opens the door for an array of interpretations. Supporters, however, contend that the balancing of the three parts gives courts flexibility in assessing a particular set of facts. Nevertheless, the test continues to be applied by the Supreme Court and the lower courts.

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MATTER OF FACT

That which is to be determined by the senses or by the testimony of witnesses who describe what they have perceived through the senses of sight, smell, touch, taste, and hearing.

Trials are highly complex forums for the consideration of fact, opinion, and law. Each area is distinct in its type and in who has responsibility for evaluating it. Courts use the term *matter of fact* to distinguish a particular kind of information. A fact is a thing done—an actual occurrence or event—and it is presented during a trial in the form of testimony and evidence. The RULES OF EVIDENCE generally allow witnesses to testify as to what they personally know about the facts in dispute, but do not

allow witnesses to testify as to their opinions (i.e., thoughts, beliefs, or inferences) in regard to those facts. An exception is made for expert witnesses, whose technical or scientific specialty is considered sufficient to allow them to state their opinion on relevant and material matters.

Facts are often difficult to ascertain because the record is unclear or because competing interpretations of the facts are presented. QUESTIONS OF FACT are for the jury, which must weigh their validity in reaching a verdict. The jury's role is kept distinct from that of the court, which has the authority to rule on all matters of law.

CROSS REFERENCE

Matter of Law.

MATTER OF LAW

That which is determined or ascertained through the use of statutes, rules, court decisions, and interpretations of legal principles.

In legal actions the term *matter of law* is used to define a particular area that is the responsibility of the court. Matter of law is distinguished from *matter of fact.* All questions concerning the determination of fact are for the jury, though a judge may determine the facts if a jury trial is waived or is not permitted under the law.

The designation of matters of law to the judge and matters of fact to the jury did not develop, however, until the late eighteenth century. Until that time a jury could exercise its judgment over matters of fact and law. Jury instructions, which in modern law are technical and specific about which law to apply, were informal and general. A jury was free to accept the instructions, modify them, or ignore them completely.

By the middle of the nineteenth century, courts had acquired authority over matters of law and confined juries to matters of fact. Commercial lawyers were particularly influential in bringing about this change, as greater judicial control over matters of law helped produce a stable legal system in which business could prosper.

In the early twenty-first century, courts rule on all matters of law, including pretrial motions, trial objections to the introduction of particular evidence or testimony, proposed jury instructions, and posttrial motions. Their decisions are based on statutes, RULES OF EVIDENCE and procedure, and the body of relevant case law.

When the facts in a civil action are not in dispute, one or both of the parties may request a court to make a SUMMARY JUDGMENT. Summary judgment is purely a matter of law; the court accepts the relevant facts as presented by the party opposing summary judgment and renders a decision based on the applicable legal principles.

A matter of law can be the basis for an appeal, but generally a matter of fact cannot. Though an appeals court can reverse a decision because of a mistaken matter of law, it will not reverse if the mistake did not affect the verdict. This "harmless error" rule developed, in part, from the recognition that during a trial the court often must make hundreds of decisions based on matters of law.

MATTER OF RECORD

Anything that has been entered in the formal written record of a court, which can be proved by the production of that record.

A court produces a lengthy written record of a trial. A *matter of record* is anything entered in the official court record, including pleadings, testimony, evidence, motions, objections, rulings, and the verdict. Any matter of record can be proved by producing the relevant document from the trial court record.

Proving matters of record is especially important in petitions for appeal. When appellate courts determine whether to hear an appeal, the existence of a matter of record can be decisive: the record can conclusively refute allegations contained in the petition. Thus, for example, an appeal based on something said in testimony must be supported by the record; if it is not, the court may deny the petition without any further consideration. An appellate court in most instances will not consider evidence, issues, or objections that were not made a part of the record at trial. Getting an issue into the record at trial is said to preserve the issue for appeal.

In general, matters of record are available to the public unless state law or court order prevents them from being released. For example, courts typically refuse to release the names of minors who are victims of sexual assault. Rhode Island's family court rules of practice provide another example; matters of record "involving scandal or immoral practices" are kept private except from the parties in interest or their representatives (R.I. R. Fam. Ct. Prac. Rule 3.3).

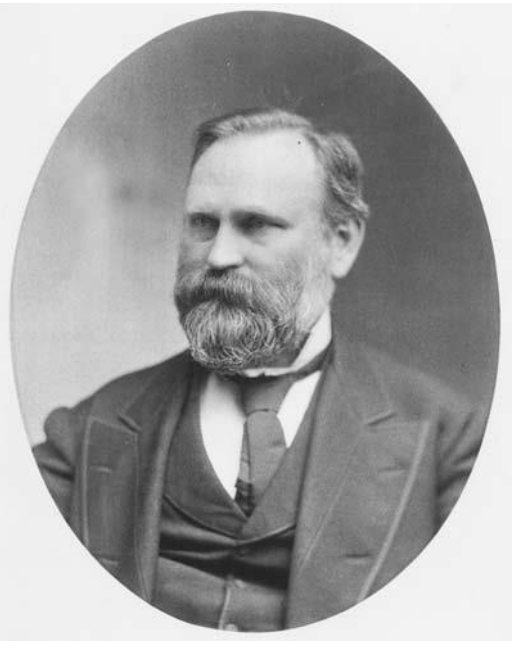
v MATTHEWS, STANLEY

Stanley Matthews served as associate justice of the U.S. Supreme Court from 1881 to 1889. A longtime friend and adviser to President RUTHERFORD B. HAYES, Matthews proved an effective and hardworking member of the Court during his brief tenure. His 1859 prosecution of a reporter for aiding the escape of two fugitive slaves proved politically embarrassing in later years. However, his opinion in YICK WO V. HOPKINS, 118 U.S. 356, 6 S. Ct. 1064, 30 L. Ed. 220 (1886), established an enduring principle of EQUAL PROTECTION analysis under the FOURTEENTH AMENDMENT.

Matthews was born July 21, 1824, in Cincinnati. He preferred his middle name and dropped his first name, Thomas, in his adult life. He graduated from Kenyon College in 1840 and then studied law in Cincinnati. He was admitted to the Tennessee bar in 1842 and began a law practice in Columbia, Tennessee. Matthews also devoted himself to journalism, editing the *Tennessee Democrat* newspaper. He returned to Ohio in 1845 to become editor of the *Cincinnati Morning Herald.*

Soon Matthews was drawn into politics and public service. He became clerk of the Ohio House of Representatives in 1848, then left in 1851 to sit as judge on the court of COMMON PLEAS in Hamilton County, Ohio. He was elected to the Ohio Senate in 1855, where he served until 1857.

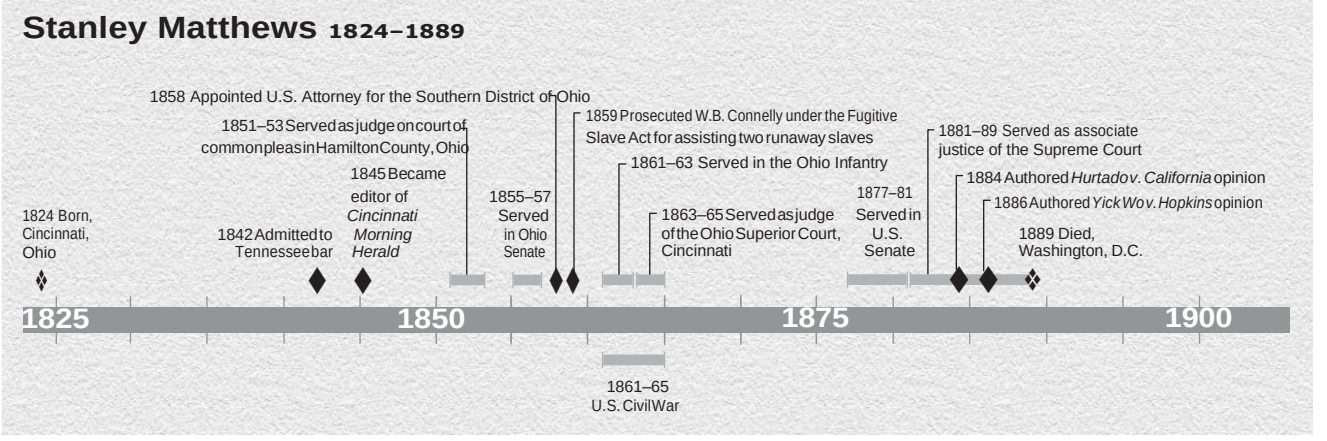
Matthews was appointed U.S. attorney for the Southern District of Ohio in 1858. In 1859 he prosecuted W. B. Connelly, a local reporter, under the federal FUGITIVE SLAVE ACT, for assisting two runaway slaves. Though Matthews was an abolitionist, he duly enforced the law. Critics charged him with forsaking his conscience in the hope of furthering his legal and political careers. Matthews never escaped the taint of these accusations.



Stanley Matthews.
PHOTOGRAPH BY MATHEW BRADY. COLLECTION OF THE SUPREME COURT OF THE UNITED STATES

When the Civil War broke out, Matthews enlisted in the Twenty-third Ohio Infantry as a lieutenant colonel, under the command of Hayes, a college classmate and friend. He left the army in 1863, following his election as a judge of the Cincinnati Superior Court. He held that post until 1865, when he resumed his private law practice.

Matthews aided his friend Hayes in the 1876 presidential election, against SAMUEL J. TILDEN, the



Democratic governor of New York. An electoral commission was formed by Congress in early 1877 to resolve disputes over the electoral votes in several states. Matthews represented Hayes and the REPUBLICAN PARTY, successfully arguing that Hayes should be awarded all the disputed votes and thus become president.

Matthews was elected to the U.S. Senate in 1877. In 1880 Hayes nominated him to the Supreme Court. The Senate rejected his nomination, in part because of his 1859 prosecution of Connelly under the fugitive slave law and also because he had represented railroads and corporations in his law practice. Some senators argued that this would affect Matthews's judgment in cases on these issues.

In 1881 President JAMES GARFIELD nominated Matthews to the Court. This time he was confirmed by one vote.

THE EXERCISE OF FUNDAMENTAL RIGHTS, INCLUDING THE RIGHT TO PURSUE A PROFESSION OR TRADE [MUST] NOT BE MADE SUBJECT TO THE EXERCISE OF ARBITRARY GOVERNMENTAL POWER.
—STANLEY MATTHEWS

During his nearly eight years on the Court, Matthews authored 232 opinions and five dissents. In *HURTADO V. CALIFORNIA*, 110 U.S. 516, 4 S. Ct. 111, 28 L. Ed. 232 (1884), Matthews rejected the idea that the Fifth and Fourteenth Amendments' DUE PROCESS provisions required states to prosecute citizens solely through the GRAND JURY indictment process. Matthews wrote that as long as the defendant had notice and an opportunity to prepare a defense to the charges, due process was provided.

Matthews is most famous for his opinion in *Yick Wo*. In this opinion Matthews invalidated a San Francisco ordinance requiring owners of laundries housed in wooden buildings to obtain permission from the city government to continue the operation of their business. Although the language of the ordinance was neutral, it was administered in such a way that Chinese laundry owners were denied licenses and nearly all non-Chinese applicants were granted licenses. Matthews looked past the neutral language to strike down the ordinance as a violation of the Fourteenth Amendment's Equal Protection Clause, concluding that unequal application of the ordinance furthered "unjust and illegal discrimination." Matthews's opinion became the foundation for modern civil rights cases involving DISPARATE IMPACT, in which discrimination is established by statistical inequality rather than through proof of intentional discrimination.

Matthews died March 22, 1889, in Washington, D.C.

MAXIM

A broad statement of principle, the truth and reasonableness of which are self-evident. A rule of EQUITY, *the system of justice that complements the* COMMON LAW.

Maxims were originally quoted in Latin, and many of the Latin phrases continue to be familiar to lawyers in the early 2000s. The maxims were not written down in an organized code or enacted by legislatures, but they have been handed down through generations of judges. As a result, the wording of a maxim may vary from case to case. For example, it is a general rule that *equity does not aid a party at fault.* This maxim has been variously expressed:

- No one is entitled to the aid of a court of equity when that aid has become necessary through his or her own fault.
- Equity does not relieve a person of the consequences of his or her own carelessness.
- A court of equity will not assist a person in extricating himself or herself from the circumstances that he or she has created.
- Equity will not grant relief from a self-created hardship.

The principles of equity and justice are universal in the common-law courts of the world. They are flexible principles aimed at achieving justice for both sides in each case. No maxim is ever absolute, but all of the principles must be weighed and fitted to the facts of an individual controversy. A rule does not apply when it would produce an unfair result. A party cannot insist that a strict technicality be enforced in his or her favor when it would create an injustice because equity will instead balance the interests of the different parties and the convenience of the public.

The Foundations of Equity

Two maxims form the primary foundations of equity: *Equity will not suffer an injustice* and *equity acts in personam.* The first of these explains the whole purpose of equity, and the second highlights the personal nature of equity. Equity looks at the circumstances of the individuals in each case and fashions a remedy that is directed at the person of the defendant who must act accordingly to provide the plaintiff with the specified relief. Unless a statute expands the powers of an equity court, it can make decrees that concern property only indirectly, phrasing them as decrees against

persons. It is said that these are the oldest two maxims of equity. All others are consistent with them.

"He Who Seeks Equity Must do Equity."

This maxim is not a moral persuasion but an enforceable RULE OF LAW. It does not require every plaintiff to have an unblemished background in order to prevail, but the court will refuse to assist anyone whose CAUSE OF ACTION is founded on his or her own misconduct toward the other party. If, for example, a wealthy woman tricks her intended spouse into signing a prenuptial agreement giving him a token $500 should they DIVORCE and after marriage she engages in a consistent pattern of conduct leading to a divorce, a court could refuse to enforce the agreement. This maxim reflects one aspect of the principle known as the *clean hands doctrine.*

"He Who Comes into Equity Must Come with Clean Hands."

This maxim bars relief for anyone guilty of improper conduct in the matter at hand. It operates to prevent any affirmative recovery for the person with "unclean hands," no matter how unfairly the person's adversary has treated him or her. The maxim is the basis of the *clean hands doctrine.* Its purpose is to protect the integrity of the court. It does not disapprove only of illegal acts but will deny relief for bad conduct that, as a matter of public policy, ought to be discouraged. A court will ask whether the bad conduct was intentional. This rule is not meant to punish carelessness or a mistake. It is possible that the wrongful conduct is not an act but a failure to act. For example, someone who hires an agent to represent him or her and then sits silently while the agent misleads another party in negotiations is as much responsible for the false statements as if he himself or she herself had made them.

The bad conduct that is condemned by the clean hands doctrine must be a part of the transaction that is the subject of the lawsuit. It is not necessary that it actually have hurt the other party. For example, equity will not relieve a plaintiff who was also trying to evade taxes or defraud creditors with a business deal, even if that person was cheated by the other party in the transaction.

Equity will always decline relief in cases in which both parties have schemed to circumvent the law. In one very old case, a robber filed a bill in equity to force his partner to account for a sum of money. When the real nature of the claim was discovered, the bill was dismissed with costs, and the lawyers were held in CONTEMPT of court for bringing such an action. This famous case has come to be called *The Highwayman* (*Everet v. Williams,* Ex. 1725, 9 L.Q. Rev. 197), and judges have been saying ever since that they will not sit to take an account between two robbers.

"Equity Aids the Vigilant, not Those Who Slumber on Their Rights."

This principle recognizes that an adversary can lose evidence, witnesses, and a fair chance to defend himself or herself after the passage of time from the date that the wrong was committed. If the defendant can show disadvantages because for a long time he or she relied on the fact that no lawsuit would be started, then the case should be dismissed in the interests of justice. The law encourages a speedy resolution for every dispute. It does not favor the cause of someone who suddenly wakes up to enforce his or her rights long after discovering that they exist. A long unreasonable delay such as this is called LACHES, and it is a defense to various forms of equitable relief.

"Equity Follows the Law."

Equity does not replace or violate the law, but it backs it up and supplements it. Equity follows appropriate RULES OF LAW, such as the RULES OF EVIDENCE and pretrial discovery.

"Equity Acts Specifically."

This maxim means that a party who sues in equity can recover the precise thing that he or she seeks rather than monetary damages as a substitute for it. This maxim is the remedy of SPECIFIC PERFORMANCE.

"Equity Delights to do Justice and Not by Halves."

It is the purpose of equity to find a complete answer to the issues that are raised in a lawsuit. It will bring in all the necessary parties, balance their rights, and give a decree that should protect all of them against further litigation on the subject. Whenever necessary, the court will retain jurisdiction in order to supervise

enforcement of relief. For example, a lawsuit remains alive as long as an INJUNCTION is in force. Either party may come back into court and apply for reconsideration of the order if circumstances change. Courts also retain jurisdiction when CHILD SUPPORT payments are ordered. The amount can be changed if the child's needs require an increase or if the supporting parent becomes ill, unemployed, or retired.

"Equity will not Suffer a Wrong to be without a Remedy."

It is the traditional purpose of equity to find solutions in lawsuits. Where money will not pay for the injury, equity has the authority to find another remedy.

This maxim is a restatement of the broad legal principle: *Ubi jus, ibi remedium,* "Where there is a right, there is a remedy." The maxim is applied in equity in an orderly way. It does not mean that anything goes. It calls forth recognized remedies for well-established wrongs, wrongs that are invasions of property rights or personal or CIVIL RIGHTS and that the law considers actionable. A court will not listen to complaints about every petty annoyance or immoral act.

"Equity Regards Substance Rather than Form."

Equity will not permit justice to be withheld just because of a technicality. Formalities that frustrate justice will be disregarded and a better approach found for each case. Equity enforces the spirit rather than the letter of the law alone.

"Equity is Equality."

This maxim means that equity will not play favorites. For example, a receiver who has been appointed to collect the assets of a business in financial trouble must use the income to pay every creditor an equal share of what is owed to him or her. If a PENSION fund loses a large amount of money through poor investment, then everyone who is entitled to benefits must suffer a fair share of the loss. Three adult children of a woman who is killed in an auto accident should share equally in any money that is recovered in a WRONGFUL DEATH action if the children are the woman's only surviving close relatives.

A judge will depart from this principle only under compelling circumstances, but the rule applies only to parties who are on an equal footing. If, for example, the woman in an auto accident died leaving three young children, then the money that is recovered might be distributed in proportion to each child's age. A younger child will have lost his or her mother for more years than an older brother or sister. Also, a receiver would have to prefer a secured creditor over those creditors who had no enforceable interest in a particular asset of the company. Unless there is proof that one person in a group is in a special position, the law will assume that each should share equally in proportion to his or her contribution or loss.

"Between Equal Equities the Law will Prevail."

When two parties want the same thing and the court cannot in good conscience say that one has a better right to the item than the other, the court will leave it where it is. For example, a company that had been collecting sales tax and turning it over to the state government found that it had overtaxed and overpaid by 2 percent. It applied for a refund, but the state refused. The court upheld the state on the ground that the money really belonged to the customers of the company. Because the company had no better right to the money than the state, the court left the money with the state.

"Between Equal Equities the First in Order of Time Shall Prevail."

When two parties each have a right to possess something, then the one who acquired an interest first should prevail in equity. For example, a man advertises a small boat for sale in the classified section of the newspaper. The first person to see the ad offers him $20 less than the asking price, but the man accepts it. That person says he or she will pick up the boat and pay for it on Saturday. Meanwhile another person comes by, offers the man more money, and the man takes it. Who owns the boat? Contract law and equity agree that the first buyer gets the boat, and the second buyer gets his or her money back.

"Equity Abhors a Forfeiture."

A FORFEITURE is a total loss of a right or a thing because of the failure to do something as required. A total loss is usually a rather stiff penalty. Unless a penalty is reasonable in relation to the seriousness of the fault, it is too harsh. In fairness and good conscience, a court of equity will refuse to permit an unreasonable forfeiture. This maxim has particularly strong

application to the ownership of land, an interest for which the law shows great respect. Title to land should never be lost for a trivial reason—for example, a delay of only a few days in closing a deal to purchase a house.

Generally equity will not interfere with a forfeiture that is required by statute, such as the loss of an airplane illegally used to smuggle drugs into the country. Unless the statute violates the DUE PROCESS requirements of the Constitution, the penalty should be enforced. "Equity abhors a forfeiture" does not overcome the maxim that "equity follows the law."

Neither will equity disregard a contract provision that was fairly bargained. Generally it is assumed that a party who does most of what is required in a business contract and does it in a reasonable way, should not be penalized for the violation of a minor technicality. A contractor who completes work on a bridge one day late, for example, should not be treated as though he or she had breached the entire contract. If the parties, however, include in their agreement an express provision, such as time is of the essence, this means that both parties understand that performance on time is essential. The party who fails to perform on time would forfeit all rights under the contract.

FURTHER READINGS

Broom, Heerbert, ed. 2008. *A Selection of Legal Maxims: Classified and Illustrated (1854).* Whitefish, MT: Kessinger.

Hoffer, Peter Charles. 1990. *The Law's Conscience: Equitable Constitutionalism in America.* Chapel Hill: Univ. of North Carolina Press.

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CROSS REFERENCES

Equity; Forfeiture; Laches.

MAYHEM

Mayhem at COMMON LAW *required a type of injury that permanently rendered the victim less able to fight offensively or defensively; it might be accomplished either by the removal of (dismemberment), or by the disablement of, some bodily member useful in fighting. Today, by statute, permanent disfigurement has been added; and as to dismemberment and disablement, there is no longer a requirement that the member have military significance. In many states the crime of mayhem is treated as aggravated assault.*