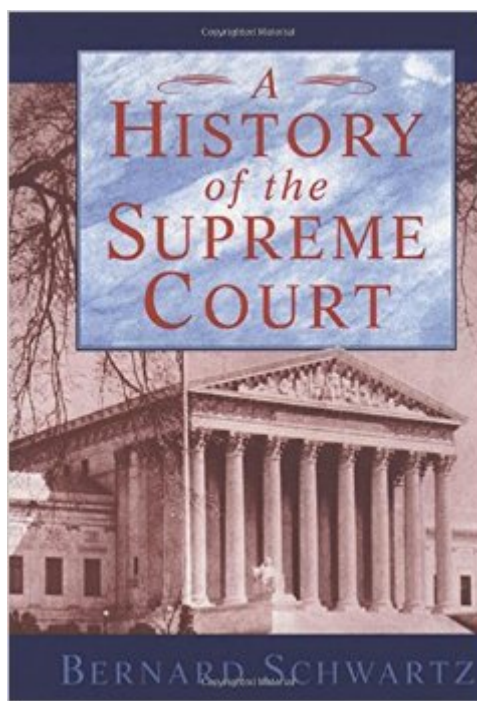


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# A History Of The Supreme Court



## Synopsis

When the first Supreme Court convened in 1790, it was so ill-esteemed that its justices frequently resigned in favor of other pursuits. John Rutledge stepped down as Associate Justice to become a state judge in South Carolina; John Jay resigned as Chief Justice to run for Governor of New York; and Alexander Hamilton declined to replace Jay, pursuing a private law practice instead. As Bernard Schwartz shows in this landmark history, the Supreme Court has indeed travelled a long and interesting journey to its current preeminent place in American life. In *A History of the Supreme Court*, Schwartz provides the finest, most comprehensive one-volume narrative ever published of our highest court. With impeccable scholarship and a clear, engaging style, he tells the story of the justices and their jurisprudence--and the influence the Court has had on American politics and society. With a keen ability to explain complex legal issues for the nonspecialist, he takes us through both the great and the undistinguished Courts of our nation's history. He provides insight into our foremost justices, such as John Marshall (who established judicial review in *Marbury v. Madison*, an outstanding display of political calculation as well as fine jurisprudence), Roger Taney (whose legacy has been overshadowed by *Dred Scott v. Sanford*), Oliver Wendell Holmes, Louis Brandeis, Benjamin Cardozo, and others. He draws on evidence such as personal letters and interviews to show how the court has worked, weaving narrative details into deft discussions of the developments in constitutional law. Schwartz also examines the operations of the court: until 1935, it met in a small room under the Senate--so cramped that the judges had to put on their robes in full view of the spectators. But when the new building was finally opened, one justice called it "almost bombastically pretentious," and another asked, "What are we supposed to do, ride in on nine elephants?" He includes fascinating asides, on the debate in the first Court, for instance, over the use of English-style wigs and gowns (the decision: gowns, no wigs); and on the day Oliver Wendell Holmes announced his resignation--the same day that Earl Warren, as a California District Attorney, argued his first case before the Court. The author brings the story right up to the present day, offering balanced analyses of the pivotal Warren Court and the Rehnquist Court through 1992 (including, of course, the arrival of Clarence Thomas). In addition, he includes four special chapters on watershed cases: *Dred Scott v. Sanford*, *Lochner v. New York*, *Brown v. Board of Education*, and *Roe v. Wade*. Schwartz not only analyzes the impact of each of these epoch-making cases, he takes us behind the scenes, drawing on all available evidence to show how the justices debated the cases and how they settled on their opinions. Bernard Schwartz is one of the most highly regarded scholars of the Supreme Court, author of dozens of books on the law, and winner of the American Bar Association's Silver Gavel Award. In this remarkable account, he provides the definitive

one-volume account of our nation's highest court.

## Book Information

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## Customer Reviews

Bernard Schwartz's "A History of the Supreme Court" is a readable if dry narrative of the 200 years of the Supreme Court between John Jay and William Rhenquist. The story of the supreme court is a complicated one, and for the most part, Schwartz tells it well. If his book is short on analysis and long on description, it is probably more due to the nature of the subject than to the qualities of the author. Schwartz focuses on two main themes in the narrative. The first one, addressed in the Prologue and in the first few chapters, deal with the practice of Judicial Review in Anglo-Saxon common law, and especially in the early US, where under Chief Justice Marshall, the supreme court has been established as SUPREME - that is, in position to pass judgment on State legislators, State courts, and even the US Congress. The theme is very prominent in the early history of the Court, where the Supreme Court fulfilled its Hamiltonian role as the final authority on the constitutionality of law. Very early, US Justices have proved that they were every bit the politicians as the Jurists - Chief Marshall successfully established Judicial Review in his Marbury vs. Madison decision, while Roger B Taney catastrophically endangered it in his attempt to end the political crisis of the Union via his Dred Scott Decision. Later in the book, Schwartz still devotes time to the question of Judicial Review, but then in a new disguise - that of Judicial restraint, which Schwartz first sees in the actions of Roger B Taney, but which were only manifested plainly in the dissents of Oliver Wendell Holmes, most famously in the Lochner vs. New York case (1905), where the majority judges, led by Rufus W.

It was an eye-opening experience. In my last year of college I took two courses on Constitutional Law (Con Law I & II) and discovered most of what I thought to be true of the Supreme Court was false. The least democratic of the three branches of government was in fact the most likely to protect individual liberty. We weren't assigned textbooks. We read Supreme Court decisions directly from the casebooks, such as *Marbury v. Madison*, *Dred Scott v. Sandford*, *Plessy v. Ferguson*, *Brown v. Board of Education*, and *Roe v. Wade*. We read both majority and minority Court opinions, both of which could be equally persuasive. Indeed, a number of the minority opinions (the *Dred Scott* decision and *Plessy v. Ferguson* are two prime examples) would eventually become the majority opinions when these cases were overturned by the Court decades later. Reading the cases was sometimes tedious but always fascinating, especially in how the justices read the Constitution and applied it in their decisions. The Constitution is not a static set of laws but a living document, intended by the framers to be flexible to meet the needs of a changing society. *A History of the Supreme Court* by Bernard Schwartz is about how the Supreme Court has interpreted the Constitution from the time of its inception down to the publication of his book, in 1993. The book reminds me of my two Con Law classes as it covers the same material. The author begins by saying the great theme of our nation's development is the idea of law as a check upon government power. Indeed, the Constitution is not a prohibition against what the people might do, but a prohibition against what the government might do. The Supreme Court was hardly supreme in the beginning.

Update: Since I wrote this review there have been several good books about the history of supreme court that have been written. Some, like Rehnquist's, might even be better. Still, none cover it all, and I believe that if you are interested in the history of court and want to read more than one or two books, this one should be on your list, even if it was written years ago. End of update. I give five stars for three reasons. First, unlike many other legal histories it has few Latin phrases and most legal terms are explained. Second, the competition is multivolume tomes, most of which are very out dated, so this is by default the best book out there. Third, arguably, every major justice and case that shaped the philosophy of Constitutional Law is covered. It is remarkable that such long history can be meaningfully condensed into one book. It is an excellent reference to look up subjects that appear in books, news and current events. It is essential for understanding Constitutional Law. For a faster read try skimming through some of the drier (or less well written) biographical descriptions, which are relatively easy to weed out. Schwartz covers some of the most interesting aspects of the

early court when the Justices also served on the federal circuit court, spending as much as six months of the year traveling cross country under the most brutal conditions. Schwartz describes the evolution of Constitutional Law involving the struggle between the federal and state governments leading up to and after the Civil War. His coverage of Holmes during the development of the modern system of federal government is very good, although sometimes biased with Schwartz's liberal views. Schwartz goes into special detail for Civil Rights with chapters on *Brown v. Board of Education* and *Roe v.*

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