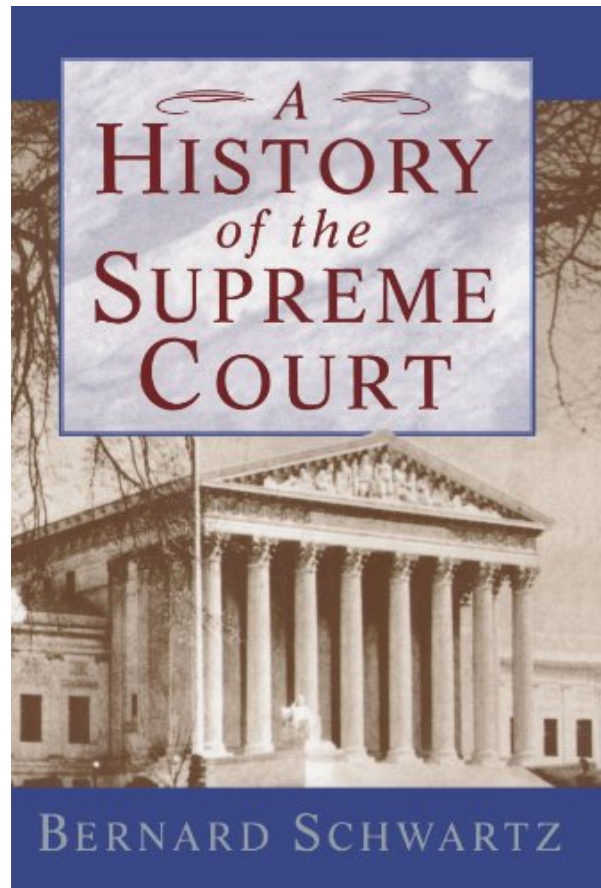
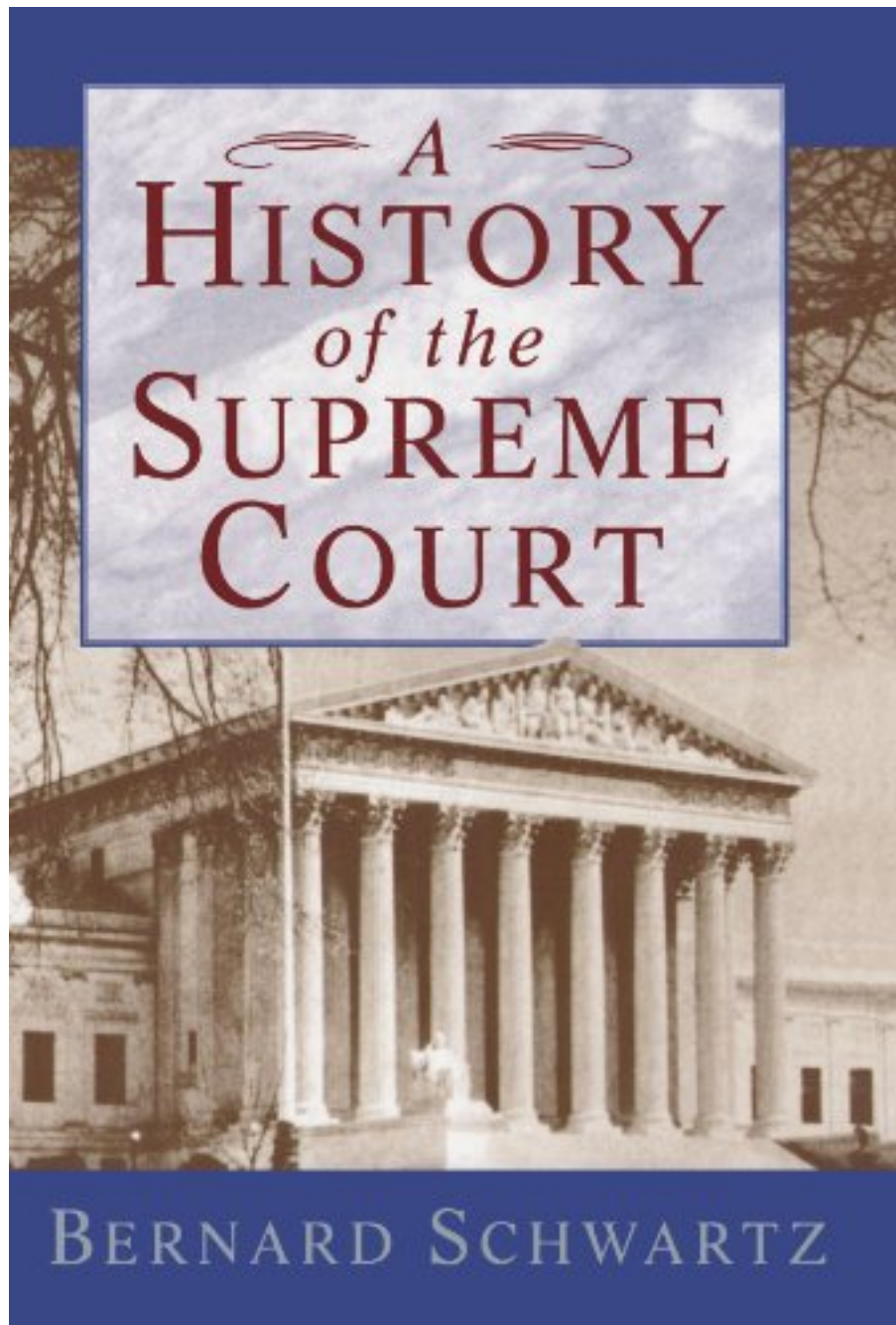


A HISTORY OF THE SUPREME COURT BY BERNARD SCHWARTZ



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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.

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Judges, Judgements, and Judicial Review

By Omer Belsky

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. Peckham, substituted its judgement to that of the legislative branch, and ruled a law restricting working hours unconstitutional (See *Lochner v. New York: Economic Regulation on Trial*). Under Judicial Restraint, the Supreme Court was only to overrule laws which no reasonable person could say were constitutional.

The other major theme in Schwartz's narrative is the switch from the primacy of property rights in the 19th century, to the supremacy of personal rights in the 20th. As the US came to allow much more government intervention in the economy, Schwartz argues, the rights of the private citizen, and especially the rights guaranteed in the bill of rights and the right of privacy had to be privileged. This tendency reached its climax in the Warren court, and particularly in the *Brown vs. Board of Education* decision. Surprisingly, though, the subsequent Burger court did not overthrow the trend. Rather, important personal rights rulings (such as *Miranda*) were affirmed, and even the right to abortion was guaranteed, as a right included within the right of privacy. The Rhenquist Court, though even more conservative than the Berger Court, has yet to turn the tables on Warren's revolution; indeed, the recent judgement against anti-Homosexual laws in Texas is another landmark civil rights decision.

Schwartz's book is interesting and thorough, but is not without flaws. The writing is somewhat crude, and Schwartz quotes other historians much too much. Schwartz has also an irritating tendency to use the same quote several times, and one quote from judge Frankfurter appears four times at least. The book also has the annoying tendency to assume all the readers are Americans.

Worse, sometimes Schwartz's scholarship is lacking. In the case of *Dred Scott vs. Sandford*, for example, Schwartz's makes no reference to the classic study by Don E. Fehrenbacher (*The Dred Scott Case: Its Significance in American Law and Politics*), either in the text or in the bibliography. As a consequence, several of Schwartz's conclusions are somewhat distorted, and sometimes his views come out of the blue entirely. Thus Schwartz calls Stephen Douglas "the chief political victim of the Dred Scott Decision" [p.124] which is inaccurate and highly misleading. In the short run, Douglas's popularity in the South did not diminish after the Dred Scott decision, and when it did, it was due to his opposition to the Lecompton constitution - not to Dred Scott. In any event, Schwartz completely ignores the sectional split within the Democratic Party, a split that was indeed seemingly worsened by the Dred Scott decision, which abandoned ambiguity in favour of an endorsement of the Southern view.

Ultimately, Schwartz's book is both instructive and readable. If it does not quite warrant a general endorsement, it is a good primer for those interested in American legal history.

9 of 10 people found the following review helpful.

Nothing else better -- for better or worse

By Dave. B.

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. Wade*. *Roe* not only concerns abortion, it also establishes for the first time the Constitutionality of autonomy: the right to choose medical treatment, raise a family when and how you wish, as well as a right to shape your intellect and personality - and that is a fascinating read. While at times Schwartz carries on for a few pages about quarrels and politics that reveal little, he does get to the point, which is often worth the wait.

Criticism

As much as this book puts all the pieces together, it makes a lot more sense if you know some of the pieces first. If you have a special interest on a time period; Revolutionary period, Jacksonian Era, labor movement, Civil Rights or Constitutional Law, there are sections that are waiting for you.

While Schwartz does include surrounding events, he concentrates on the philosophy, particularly the development of liberal ideals in Constitutional Law. He even goes out of his way to criticize Richard Posner, a Federal Circuit Court Judge from the "Chicago-school" (economic law as part of curriculum) and prolific writer who has views every bit as conservative as Schwartz's views are liberal. An absence of political commentary would have made for a better history (not that I prefer Posner).

His history does reveal the undertones of political tug-of-war between Congress or the Executive against the Court, but he occasionally attributes events in history to the genius of certain justices rather than as a product of a complex process. This is particularly true with his description of Holmes, who is one of his heroes (and rightly so). In a period when there was little clarity in how to apply the Constitution to a giant expanding and industrializing country, the members of the court had to rely on their own personal experience and ethics for many decisions. While Holmes would make glorious arguments about the Constitutionality of his decisions, ultimately his conscience, and not the law, was his guide - a criticism that he had of his opponents.

The philosophy of the law, through a history of men and their deeds, is covered quite extensively, which makes this an important history of the Supreme Court despite my criticisms. This book is much less philosophical or convoluted than Morton H. Horwitz's *The Transformation of American Law: 1870-1960* (not to be confused with the first volume, 1780-1860, which I highly recommend). I don't want Schwartz to have written a better book (well maybe a little better organized), what I want is for a modern legal historian to write a history of the Supreme Court using contemporary scholarship - a companion to Lawrence Friedman's *A History of American Law* 3rd edition. Besides, a lot has happened since 1993 and it is time for an update.

Readability rating: 6

Out of 10, two points off for vocabulary, two points off for excessive pontificating.

Most historical accounts written by lawyers are illegible to the layperson because of the spattering of French and Latin terminology, a frustration for anyone who did not spend a year in college learning legalese. Schwartz explains most of the legal terminology he use, but I still had to look things up, starting on page 6 with "general writ of assistance (its on the web)." And, Schwartz never uses one word when he can use two and he often seems to be quoting just for the sake of using a reference. He even quotes a review of one of his earlier works to support his argument, which is simply bad scholarship (p 269 n. 24). But, don't let this stop

you, I rarely give any book more than an 8 unless it is a fantastic read -- and if I disliked it I would have given it a lower score.

Research Rating - moderate

Schwartz likes to write a lot before getting to the point, and sometimes the point is expressed in very long complex sentences. This makes hard to find good quotes. .

Footnotes are numerous but arranged in a the older Chicago Style. For instance, on page 437, "80. 112 S. Ct. at 2813-2814" refers to "Planned Parenthood v Casey, 1992", but you must carefully read three pages of notes figure this out. Also, notes are listed by chapter number, not chapter title or page, making it harder to find the note. .

The bibliography and index are excellent, and there is a separate case index.

While the book is packed with good and well researched information, much of it from original or primary sources, it is not always presented effectively or without bias.

9 of 10 people found the following review helpful.

Recommended for anyone interested in the Supreme Court

By A Customer

Prof. Schwartz' book is the best I have read on the subject to date, and as a Judge, I have a particular interest in the Supreme Court. Schwartz' writing flows, and his knowledge is second to none. I recommend this book to anyone even casually interested in the Supreme Court. He really brings this subject to life.

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