76TH CONGRESS : : : 3D SESSION

JANUARY 3, 1940–JANUARY 3, 1941

HOUSE DOCUMENTS

VOL. 10

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1940

76th Congress, 3d Session · HOUSE · Document No. 649

Proceedings

at the

Ceremonies in Commemoration

of the

One Hundred and Fiftieth Anniversary

of the

First Meeting of the Supreme Court of the United States

February One
Nineteen Hundred and Forty

United States
Government Printing Office
Washington : 1940

House Concurrent Resolution No. 45

[Submitted by Mr. Cochran of Missouri]

Resolved by the House of Representatives (the Senate concurring), That the proceedings at the various ceremonies in commemoration of the one hundred and fiftieth anniversary of the commencement of the first session of the Supreme Court of the United States, together with such additional matter as the Joint Committee on Arrangements in charge of these ceremonies may deem fitting and appropriate, in connection with this historical event, be printed, with illustrations, as a document; and that two hundred thousand additional copies be printed, of which fifty thousand shall be for the use of the Senate and one hundred and fifty thousand shall be for the use of the House of Representatives.

Adopted March 4, 1940.

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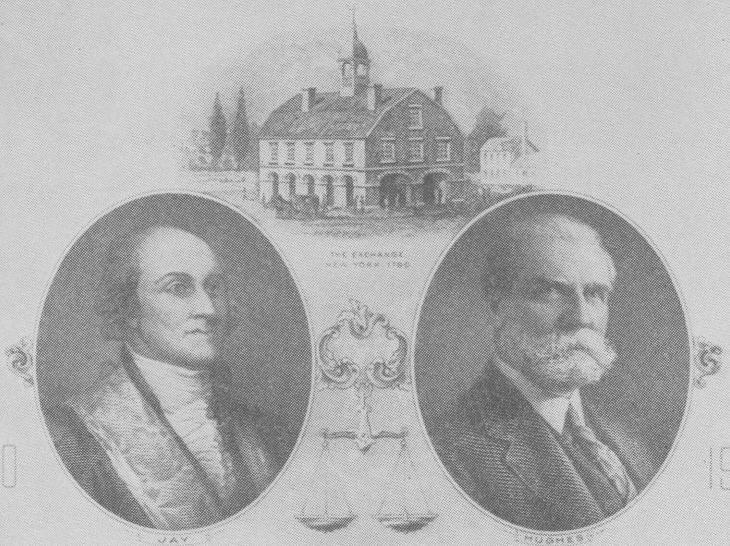
House Concurrent Resolution No. 33

[Submitted by Mr. Bloom of New York]

Resolved by the House of Representatives (the Senate concurring), That a joint committee consisting of five Members of the House of Representatives and five Members of the Senate shall be appointed by the Speaker of the House of Representatives and the President of the Senate, respectively, which is empowered to make plans and suitable arrangements for fitting and proper exercises, to be held on the 1st day of February 1940, in commemoration of the one hundred and fiftieth anniversary of the commencement of the first session of the Supreme Court of the United States, held at the city of New York on Monday, the 1st day of February 1790.

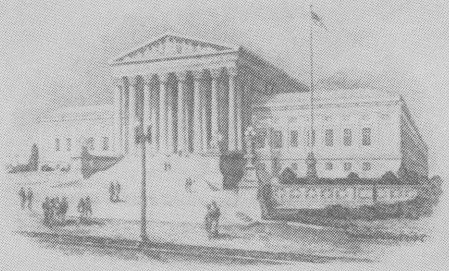
Adopted February 1, 1939.



Sesquicentennial Celebration
of the
Supreme Court of the United States
City of Washington
February first, Nineteen Hundred Forty

Senate Committee

Henry F. Ashurst
Chairman
Joseph Ellender
Carl A. Hatch
William G. Bulow
Warren R. Austin



House Committee

Sol Bloom
Chairman
Hatton W. Sumners
Eugene J. Keogh
W. I. Sharp
Earl C. Michener

Congress of the United States

The Joint Committee on Arrangements

SENATE COMMITTEE

HENRY F. ASHURST, *Chairman*

KEY PITTMAN

CARL A. HATCH

WILLIAM E. BORAH

WARREN R. AUSTIN

HOUSE COMMITTEE

SOL BLOOM, *Chairman*
Director of Arrangements

HATTON W. SUMNERS

EUGENE J. KEOGH

U. S. GUYER

EARL C. MICHENER

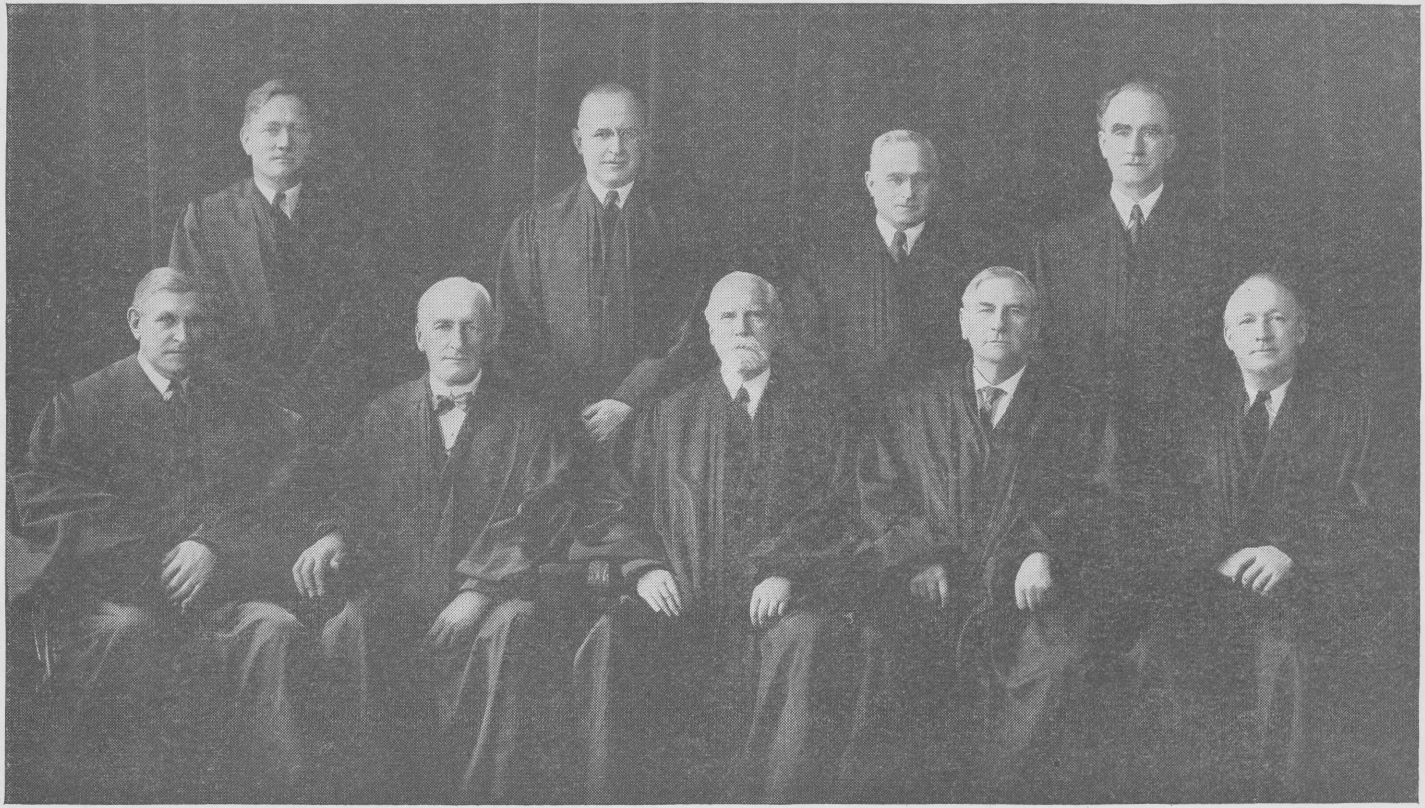
THE SUPREME COURT OF THE UNITED STATES, 1940

ASSOCIATE JUSTICE
WILLIAM O. DOUGLAS

ASSOCIATE JUSTICE
STANLEY F. REED

ASSOCIATE JUSTICE
FELIX FRANKFURTER

ASSOCIATE JUSTICE
FRANK MURPHY



ASSOCIATE JUSTICE
OWEN J. ROBERTS

ASSOCIATE JUSTICE
JAMES C. McREYNOLDS

THE CHIEF JUSTICE
OF THE UNITED STATES
CHARLES E. HUGHES

ASSOCIATE JUSTICE
HARLAN F. STONE

ASSOCIATE JUSTICE
HUGO L. BLACK

Proceedings *of the* First Session *of the* SUPREME COURT *of the* UNITED STATES

Monday, February 1, 1790

At the SUPREME JUDICIAL COURT of the UNITED STATES, begun and held at New York (being the seat of the National Government) on the first Monday of February, and on the first day of said month Anno Domini 1790.

PRESENT:

The Honorable JOHN JAY, Esquire, *Chief Justice*
The Honorable WILLIAM CUSHING, and
The Honorable JAMES WILSON, Esqrs., *Associate Justices.*

This being the day assigned by law, for commencing the first sessions of the Supreme Court of the United States, and a sufficient number of Justices not being convened, the Court is adjourned, by the Justices now present, untill to morrow, at one of the clock in the afternoon.

Tuesday, February 1, 1940

Pursuant to adjournment the Court met at the Supreme Court Building.

PRESENT:

The Honorable CHARLES E. HUGHES, *Chief Justice.*
JAMES C. MCREYNOLDS,
HARLAN F. STONE,
OWEN J. ROBERTS,
HUGO L. BLACK,
STANLEY REED,
FELIX FRANKFURTER, and
WILLIAM O. DOUGLAS, *Associate Justices.*
THOMAS ENNALLS WAGGAMAN, ESQUIRE, *Marshal.*
CHARLES ELMORE CROPLEY, *Clerk.*

Proclamation being made the Court is opened.

NOTE: Addresses by the Attorney General, the President of the American Bar Association, and the Chief Justice were entertained. The Court then proceeded to admit seven attorneys to practice as members of the bar and to hear certain motions and arguments of counsel in cases.

Proclamation being made the Court is adjourned until tomorrow at 12 o'clock.


SEAL OF THE SUPREME COURT OF THE UNITED STATES
E PLURIBUS
UNUM

Address of the Attorney General of the United States Hon. Robert H. Jackson

Mr. Chief Justice and Associate Justices of the Supreme Court of the United States:

The bar of the Supreme Court, including those who here represent the executive branch of the Government, desires to observe with you the one hundred fiftieth anniversary of this Court's service. We do so in a spirit of rededication to the great principles of freedom and order which come to life in your judgments.

The Court, as we know it, could hardly have been foreseen from its beginnings. When it first convened, no one seemed in immediate need of its appellate process, and it adjourned to await the perpetration of errors by lower courts. Errors were, of course, soon forthcoming. The Justices who sat upon the bench, although not themselves aged, were older than the Court itself. The duration of an argument was then measured in days instead of hours. All questions were open ones, and neither the statesmanship of the Justices nor the imagination of the advocate was confined by the ruling case. Some philosophers have so feared the weight of tradition as to assert that happy are a people who have no history. We, however, may at least believe that there was some happiness in belonging to a

bar that had little occasion to distinguish precedents or in sitting upon a Court that could not be invited to overrule itself. Few tribunals have had greater opportunity for original and constructive work, and none ever seized opportunity with more daring and wisdom.

From the very beginning the duties of the Court required it, by interpretation of the Constitution, to settle doubts which the framers themselves had been unable to resolve. Luther Martin in his great plea in *McCulloch* v. *Maryland* was not only an advocate but a witness of what had been and a prophet of things to come. He said: "The whole of this subject of taxation is full of difficulties, which the Convention found it impossible to solve in a manner entirely satisfactory." Thus, controversies so delicate that the framers would have risked their unity if an answer had been forced were bequeathed to this Court. During its early days it had the aid of counsel who expounded the Constitution from intimate and personal experience in its making. They knew that to get acceptance of its fundamental design for government many controversial details were left to be filled in from time to time by the wisdom of those who were to follow. This knowledge made them bold.

The passing of John Marshall marked the passing of that phase of the Court's experience. Thereafter the Constitution became less a living and contemporary thing—more and more a tradition. The work of the Court became less an exposition of its text and setting and purposes and became more largely a study of what later men had said about it. The Constitution was less resorted to for deciding cases, and cases were more resorted to for deciding about the Constitution. This was the inevitable consequence of accumulating a body of judicial experience and opinion which the legal profession would regard as precedents.

It would, I am persuaded, be a mistake to regard the work of the Court of our own time as either less important or less constructive than that of its earlier days. It is perhaps more difficult to revise

an old doctrine to fit changed conditions than to write a new doctrine on a clean slate. But, as the underlying structure of society shifts, its law must be reviewed and rewritten in terms of current conditions if it is not to be a dead science.

In this sense, this age is one of founding fathers to those who follow. Of course, they will reexamine the work of this day, and some will be rejected. Time will no doubt disclose that sometimes when our generation thinks it is correcting a mistake of the past, it is really only substituting one of its own. But the greater number of your judgments become a part of the basic philosophy on which a future society will adjust its conflicts.

We who strive at your bar venture to think ourselves also in some measure consecrated to the task of administering justice. Recent opinions have reminded us that the initiative in reconsidering legal doctrine should come from an adequate challenge by counsel. Lawyers are close to the concrete consequences upon daily life of the pronouncements of this Court. It is for us to bring the cases and to present for your corrective action any wrongs and injustices that result from operation of the law.

However well the Court and its bar may discharge their tasks, the destiny of this Court is inseparably linked to the fate of our democratic system of representative government. Judicial functions, as we have evolved them, can be discharged only in that kind of society which is willing to submit its conflicts to adjudication and to subordinate power to reason. The future of the Court may depend more upon the competence of the executive and legislative branches of government to solve their problems adequately and in time than upon the merit which is its own. There seems no likelihood that the tensions and conflicts of our society are to decrease. Time increases the disparity between underlying economic and social conditions, in response to which our Federation was fashioned, and those in which it must function. Adjustment grows more urgent, more extensive, and more delicate. I see no reason to doubt that the problems of the

next half century will test the wisdom and courage of this Court as severely as any half century of its existence. . . .

In a system which makes legal questions of many matters that other nations treat as policy questions, the bench and the bar share an inescapable responsibility for fostering social and cultural attitudes which sustain a free and just government. Our jurisprudence is distinctive in that every great movement in American history has produced a leading case in this Court. Ultimately, in some form of litigation, each underlying opposition and unrest in our society finds its way to this judgment seat. Here, conflicts were reconciled or, sometimes, unhappily, intensified. In this forum will be heard the unending contentions between liberty and authority, between progress and stability, between property rights and personal rights, and between those forces defined by James Bryce as centrifugal and centripetal, and whose struggle he declared made up most of history. The judgments and opinions of this Court deeply penetrate the intellectual life of the Nation. This Court is more than an arbiter of cases and controversies. It is the custodian of a culture and is the protector of a philosophy of equal rights, of civil liberty, of tolerance, and of trusteeship of political and economic power, general acceptance of which gives us a basic national unity. Without it our representative system would be impossible.

Lord Balfour made an observation about British government, equally applicable to American, and expressed a hope that we may well share, when he wrote:

"Our alternating Cabinets, though belonging to different parties, have never differed about the foundation of society, and it is evident that our whole political machinery presupposes a people so fundamentally as one that they can afford to bicker; and so sure of their own moderation that they are not dangerously disturbed by the never-ending din of political conflict. May it always be so."

Address of the President of the American Bar Association Hon. Charles A. Beardsley

Mr. Chief Justice and Associate Justices of the Supreme Court of the United States:

I appreciate this opportunity, which has been accorded to me as the representative of the American Bar Association, to participate in this commemoration of the one hundred and fiftieth anniversary of the first session of this honorable Court.

It is most fitting that this event should be commemorated. Its commemoration may well serve to recall to the minds of the American people the purposes of the founders of our National Government, and the part, in the fulfillment of those purposes, that this Court was intended to take, has taken, and will take in the years to come. And this commemoration may well serve, further, to challenge the American people to dedicate themselves anew to the fulfillment of those purposes.

In the preamble of our Constitution, its framers recited the purposes to attain which the Constitution was to be ordained and established. In this recital, the purpose to "establish justice" is second only to the purpose "to form a more perfect Union."

Daniel Webster reminds us that justice is "the ligament that holds

civilized beings together," and "the greatest interest of man on earth."

To the end that they might "establish justice," to the end that they might provide "the ligament that holds civilized beings together," to the end that they might strengthen the foundation of civilization on the North American continent, and to the end that they might serve "the greatest interest of man on earth," the framers of the Constitution provided therein for a Federal judiciary, with this Court as its head, to administer "justice" under and pursuant to law.

In the words of President Washington this Court was intended to be "the keystone of our political fabric." And it was intended to be the protector of our Constitution and of the inalienable rights of a free people.

Gladstone's characterization of our Constitution as "the most wonderful product ever struck off at a given time by the brain and purpose of man" is justified by the fact that, for 150 years, this Court has approached, as near as any human institution might well be expected to approach, the fulfillment of the purpose of the framers of the Constitution, to "establish justice" for the American people.

We may properly take pride in the extent to which this Court has approached that fulfillment, realizing as we do, as Addison reminds us, that to be just "to the utmost of our abilities is the glory of man," and that "to be perfectly just is an attribute of the Divine nature."

Not only is it permissible on this occasion for us to recall that this Court is a human institution, but it is also desirable for the American people to recall on this occasion that this human institution will endure, and that justice, under and pursuant to law, will be preserved for the American people, only so long as the American people, by their alertness, fidelity, and sanity, cause them to be preserved and to endure.

For there are forces at work in the world today that are inimical to the continued fulfillment by this Court of the purpose for which it was created.

As a result of the workings of these forces in substantial parts of

the world, national temples of justice are no longer honored or worthy of honor, and international morality and law are giving ground to international immorality and anarchy. And many hundreds of millions of people are engaged in war, seeking to settle their differences not according to justice but by force—by the use of a means that is calculated to bring victory to the strongest or to the most unscrupulous, of the contending peoples, wholly regardless of justice.

And, even within our own borders, there are forces at work that are inimical to the principles upon which our Government is founded, including the principles of justice under and pursuant to law.

Thus, there is a tendency among groups of employers and employees to use physical force as the means of settling differences instead of being willing to use the administration of justice—the institution devised by man, when he was emerging from barbarism, as a substitute for combats, for fights, and for wars—an institution that is calculated to bring victory to the contending party who has the most justice on his side, regardless of the relative physical strength of the contending parties.

Also, we have among us many people who are eternally striving to inculcate doctrines that in other parts of the world are producing international lawlessness, anarchy, and war; doctrines that in other parts of the world are destroying temples of justice; and doctrines that in other parts of the world are depriving the people of their liberties and of their lives.

And, finally, there is an all-too-widespread inclination to disregard the fundamental principles upon which our Government and our civilization are founded, and an all-too-general disposition to ignore the historic warning that "eternal vigilance is the price of liberty."

For 150 years the American people have honored, respected, and sustained this Court, and through the years this Court has gained for itself the gratitude and affectionate regard of the American people, because the American people have been steadfast in their devotion to the fundamental principles upon which our Government is founded,

and because the American people have seen in the record of this Court the evidence of the striving by its members to be just "to the utmost of their abilities."

This Court has gained, and has retained, this honor, this respect, this gratitude, and this affectionate regard, although, in the words of a nineteenth-century publicist, this Court has no "palaces or treasures, no arms but truth and wisdom, and no splendor but the justice and publicity of its judgments."

On this occasion, as we commemorate the one hundred and fiftieth anniversary of the first session of this Court, we dedicate ourselves anew to the task of defending our Constitution, to the task of guarding our liberties, and to the task of strengthening, defending, and preserving this Court as "the keystone of our political fabric," as the protector of our Constitution, and as the guarantor of justice for the American people under and pursuant to law, not only for another 150 years but also for all time.

Address of the
Chief Justice of the United States
Hon. Charles E. Hughes

MR. ATTORNEY GENERAL and MR. BEARDSLEY:

The Court welcomes the words of appreciation you have spoken in recognition of the one hundred and fiftieth anniversary of the day appointed for the first session of this tribunal. We are highly gratified at the presence of distinguished Senators and Representatives—the members of the Judiciary Committees of the Houses of Congress and of the special joint committee appointed in relation to this occasion. We trust that what has been said echoes a sentiment cherished in the hearts of the American people. They have again and again evinced the sound instinct which leads them, regardless of any special knowledge of legal matters, to cherish as their priceless possession the judicial institutions which safeguard the reign of law as opposed to despotic will. Democracy is a most hopeful way of life, but its promise of liberty and of human betterment will be but idle words save as the ideals of justice, not only between man and man, but between government and citizen, are held supreme.

The States have the power and privilege of administering justice except in the field delegated to the Nation, and in that field there is a distinct and compelling need. The recognition of this anniver-

sary implies the persistence, through the vicissitudes of 150 years, of the deep and abiding conviction that amid the clashes of political policies, the martial demands of crusaders, the appeals of sincere but conflicting voices, the outbursts of passion and of the prejudices growing out of particular interests, there must be somewhere the quiet, deliberate, and effective determination of an arbiter of the fundamental questions which inevitably grow out of our constitutional system and must be determined in controversies as to individual rights. It is the unique function of this Court not to dictate policy, not to promote or oppose crusades, but to maintain the balance between States and Nation through the maintenance of the rights and duties of individuals.

But, necessary as is this institution, its successful working has depended upon its integrity and the confidence thus inspired. By the method of selection, the tenure of office, the removal from the bias of political ambition, the people have sought to obtain as impartial a body as is humanly possible and to safeguard their basic interests from impairment by the partiality and the passions of politics. The ideals of the institution cannot, of course, obscure its human limitations. It does most of its work without special public attention to particular decisions. But ever and anon arise questions which excite an intense public interest, are divisive in character, dividing the opinion of lawyers as well as laymen. However serious the division of opinion, these cases must be decided. It should occasion no surprise that there should be acute differences of opinion on difficult questions of constitutional law when in every other field of human achievement, in art, theology, and even on the highest levels of scientific research, there are expert disputants. The more weighty the question, the more serious the debate, the more likely is the opportunity for honest and expert disagreement. This is a token of vitality. It is fortunate and not regrettable that the avenues of criticism are open to all, whether they denounce or praise. This is a vital part of the democratic process. The essential thing is that the independence,

the fearlessness, the impartial thought, and conscientious motive of those who decide should both exist and be recognized. And at the end of 150 years this tribunal still stands as an embodiment of the ideal of the independence of the judicial function in this, the highest and most important sphere of its exercise.

We cannot recognize fittingly this anniversary without recalling the services of the men who have preceded us and whose work has made possible such repute as this institution enjoys. This tribunal works in a highly concrete fashion. The traditions it holds have been wrought out through the years at the conference table and in the earnest study and discussions of men constantly alive to a supreme obligation. We do not write on a blank sheet. The Court has its jurisprudence, the helpful repository of the deliberate and expressed convictions of generations of sincere minds addressing themselves to exposition and decision, not with the freedom of casual critics or even of studious commentators, but under the pressure and within the limits of a definite official responsibility.

To one who over 29 years ago first took his seat upon this bench, this day is full of memories of associations with those no longer with us, who wrought with strength and high purpose according to the light that was given them, in complete absorption in their judicial duty. We pay our tribute to these men of the more recent period as we recognize our indebtedness to their eminent predecessors. We venerate their example. Reflection upon their lives brings emphasis to the thought that even with the tenure of the judicial office, the service of individuals however important in their day soon yields to the service of others who must meet new problems and carry on in their own strength.

The generations come and go, but the institutions of our Government have survived. This institution survives as essential to the perpetuation of our constitutional form of government—a system responsive to the needs of a people who seek to maintain the advantages of local government over local concerns and at the same

time the necessary national authority over national concerns, and to make sure that the fundamental guarantees with respect to life, liberty, and property, and of freedom of speech, press, assembly, and religion shall be held inviolate. The fathers deemed that system of government well devised to secure the blessings of liberty to themselves and their posterity. Whether that system shall continue does not rest with this Court but with the people who have created that system. As Chief Justice Marshall said, "The people made the Constitution, and the people can unmake it. It is the creature of their will, and lives only by their will." It is our responsibility to see that their will as expressed in their Constitution shall be faithfully executed in the determination of their controversies.

And deeply conscious of that responsibility, in the spirit and with the loyalty of those who have preceded us, we now rededicate ourselves to our task.

Address of
Hon. Carl A. Hatch
Senator from New Mexico

MR. PRESIDENT AND MEMBERS OF THE SENATE:

Today marks the one hundred and fiftieth anniversary of the Supreme Court of the United States. We have just returned from the Supreme Court, where appropriate ceremonies celebrating this auspicious occasion have been concluded. The Judiciary Committees of both branches of Congress attended those ceremonies, paying due and proper respect to the judicial branch of the Government. Eloquent and able addresses were delivered by the Attorney General of the United States and by Mr. Beardsley, president of the American Bar Association. The Chief Justice of the United States responded with remarks eminently befitting the dignity of the high office he occupies and the traditions and ideals of the Court. It would hardly seem proper, Mr. President, to let this day pass without some word being said on the floor of the Senate paying at least some measure of tribute to that branch of government which celebrates the anniversary of its birth today.

Fifty years ago, in speaking at the ceremonies held in the city of New York commemorating the one-hundredth anniversary of the

Supreme Court, a former President of the United States, Mr. Cleveland, said:

> We are accustomed to express on every fit occasion our reverence for the virtue and patriotism in which the foundations of the Republic were laid, and to rejoice in the blessings vouchsafed to us under free institutions.

As Mr. Cleveland spoke 50 years ago, so may we well speak today. We should fittingly express this day our reverence for the virtue and patriotism in which the foundations of the Republic were laid. With even greater fervor we can well rejoice today in the blessings vouchsafed to us under the free institutions of our Government.

It was only yesterday, it seems, at the beginning of the World War, that Sir Edward Grey sadly said:

> One by one the lights of civilization are being extinguished. They shall not be relighted in our generation.

Today as we look across the seas at the Old World we wonder if once more the lights of civilization are being extinguished. For a decade or more we have watched the fall of governments. We have seen liberty die in other lands. We have seen free people and free governments destroyed, and, even as I speak, a small but a brave and fearless people fighting against the advancing hordes of an aggressor who would seize and destroy the right of a free country to rule and govern herself.

As we see these things we almost say, as Romain Rolland said during the years of the last World War:

> A sacrilegious conflict which shows a maddened Europe ascending its funeral pyre, and, like Hercules, destroying itself with its own hands.

As these scenes unfold and as tyranny stalks abroad in other lands and free institutions are obliterated from almost every country in the world, I repeat we may well pause for a moment today and pay our reverence and respect for the "virtue and patriotism in which the foundations of the Republic were laid."

In laying those foundations of this Republic our fathers proceeded

not by accident. It is no accident that freedom survives in America today. The founders of the Republic were men who understood the true science of government. Passionately they believed that powers of government must be separated. As often expressed by them, "the accumulation of all the powers of government in the same hands, whether of one, or a few, or many, and whether hereditary, self-appointed, or elected," could justly be "pronounced the very definition of tyranny." So believing, they laid out the plan upon which the structure of our Government rests today.

It was not a new plan. Students of government, they were familiar with every form and theory of government which existed in the world. In another address delivered on the occasion of the one-hundredth anniversary of the Supreme Court, it was said:

> A division of the powers of government was not a political device, newly invented by the statesmen who framed the Constitution of the United States. Aristotle, in the fourth book of his Politics, observes that in every polity there are three departments, the suitable form of each of which the wise lawgiver must consider, and according to the variation of which one State shall differ from another. These he describes as, first, the assembly for public affairs; second, the officers of the State, including their powers and mode of appointment; and, third, the judging or judicial department.

Following this and other plans and being ever mindful of their own mistakes and errors under the Articles of Confederation, our fathers laid the foundations of this Republic. And from their work came the Supreme Court of the United States, the anniversary of whose birth we celebrate today.

In the Supreme Court there was something new and unique in governments of men. Of course, courts of justice had long existed. The statesmen who wrote the Constitution knew well the history of the judiciary. They knew its weaknesses and they knew its strength. They knew its faults and its frailties. English courts had not always functioned according to the principles of English law, in which the colonists devoutly believed. Yet the writers of the Constitution gave birth to the most powerful court known to men, the Supreme Court

of the United States, and created it as a separate and independent arm or branch of the Federal Government.

Of that Court, De Tocqueville said:

> In the nations of Europe the courts of justice are called upon to try the controversies of private individuals, but the Supreme Court of the United States summons sovereign powers to its bar.

Under the authority of the Constitution but, as the president of the American Bar Association observed this morning, with "no guards, palaces, or treasures, no arms but truth and wisdom, and no splendor but the justice and publicity of its judgments," the Supreme Court of the United States has pursued its course for 150 years. Not always right, of course, not divine, but very human, the Supreme Court has met the multitude of questions presented to it throughout the course of its history and has builded a body of law upon which the freedom of our institutions rests today. I can pay the Court no greater tribute than this. If I spoke for hours and voiced all the high and lofty sentiments which have been expressed throughout the years by lawyers and judges commemorating the work of the Supreme Court of the United States, I could speak no greater tribute than I have paid when I say the Supreme Court has helped to build, preserve, and keep free government for the people of the United States.

After all, is there anything else that matters? If free government ever fails here, if tyranny conquers this country, if the right of self-rule ever be denied in the United States, then will we indeed echo the words of Sir Edward Grey and with him sadly say:

> One by one the lights of civilization are being extinguished.

But this, Mr. President, must not be. Somewhere in the world the lights of civilization must continue to burn. Somewhere in the world the right of men to be free must be preserved. Somewhere in the world there must be people willing to declare over and over again with Abraham Lincoln, "Government of the people, by the people, for the people shall not perish from the earth."

This country, which gave birth to the ideals of free government, is the country where those rights must be preserved and maintained. It is the lot of this country to keep the lights of civilization from being extinguished. It is ours, Mr. President, to maintain and preserve the rights of men to be free. It is ours to hold fast to the principle that men can govern themselves.

As the ultimate repository of the rights and liberties of the people of America, the Supreme Court of the United States has the great responsibility of safeguarding democracy itself. In the years of its existence the Court, with few lapses, has done that very thing. The lights of liberty in America have been kept burning. Men have been free in the United States. Free institutions survive in America today. That men may be free tomorrow and throughout the years to come, let not justice be denied. As the Court speaks the voice of the people as expressed in the Constitution, let wisdom, truth, and righteousness permeate its decisions. Let those decisions and opinions today speak the commendation of the Court. Let its decrees write its history. Let its judgment for others be judgment upon itself. Truly the Supreme Court is the keeper of the lights of freedom, perhaps of civilization. May those lights never be dimmed. May their bright and shining effulgence ever reflect the greatness and the glory of the Supreme Court and the greatness and glory of the United States of America.

Address of
Hon. Warren R. Austin
Senator from Vermont

MR. PRESIDENT and MEMBERS OF THE SENATE:

The Supreme Court is a unique instrument of popular sovereignty. Without power to enforce its judgments, uncrowned, unsceptered, devoid of sword, or purse, or patronage, the Supreme Court of the United States for 150 years has successfully guarded the institutions which expel autocracy and animate free government.

The authority of this highest tribunal of justice consists of the moral energy springing from popular belief and confidence in, and respect for, the purity, wisdom, and independence of the Court.

The limitation upon its function, confining its judicial opinions to cases of injury litigated in due judicial course between parties having a legal interest therein, has maintained that separation of it from the executive and legislative branches of government which has been an effective barrier against concentration of sovereignty. Its judicial power cannot be extended by itself. When properly summoned it is the duty of the Court, from which it may not shrink, to exercise this power. In cases and controversies in which legal judgment can be rendered, it must declare the law. However, that

declaration, to endure, must be right. Herein rests the safety of popular government.

No departure from this limitation can be suffered. Advisory opinions may not be required of the Court by either Congress or Executive. Moot cases may not be heard and decided by the Court.

The wholesome restriction, by the Constitution, of original jurisdiction to but a few cases, has not only proved to be peculiarly beneficial to a Federal system dependent upon maintenance of local State sovereignties, but it has given vigor to the principle of responsibility direct to the people.

The Supreme Court derives whatever exclusive jurisdiction it possesses, and all of its judicial power, from the people by a direct grant. It does not receive such power from Congress, as other Federal courts do. This jurisdiction cannot be enlarged nor can it be taken away save by the people themselves. This unique characteristic of the Court protects States and citizens from the Central Government and conserves for the people the prerogative of change. Appellate jurisdiction alone is subject to regulation by Congress.

The supremacy of our fundamental law—the known covenant of our rights—is peculiarly the charge of the Court. All citizens, and all officers, high and low, are bound to support the Constitution; yet this is inadequate to perpetuate our free institutions. This we know by the tragic experience of our forefathers without fixed laws to live by.

The people's law, made by themselves, for themselves and their posterity, was fixed in the Constitution. It can be changed only by the people. It cannot be changed by government. It is intended to govern government. It protects the citizen from the government. Those two fortresses of their liberty—State sovereignty and decentralization of Federal rule—depend upon its sanctity. Therefore, the people established an institution with the novel power of giving stability and vitality to the people's law. The Supreme Court is particularly the people's court.

Though not expressly described in the Constitution, the right to

declare statutes void for conflict with the fundamental law is clear by necessary implication and inevitable practice. This has been the rod by which the people have disciplined their government. The certainty of its use, notwithstanding the roaring of the transgressors, has punctuated the history of our remarkable progress economically, politically, and socially. Its use has been the marvel and admiration of statesmen, jurists, and historians of other countries.

It has preserved our form of government. For a century and a half it has enabled a logical development of the American system.

It has prevented a gap occurring between the limits of the powers of the Republic and those of the several States, and likewise it has prevented the overlapping of those powers. It has defined the frontiers and boundaries of jurisdiction.

When the national sovereignty was at low ebb, the Court, under Marshall, turned the tide.

When the backwash of the War between the States threatened to engulf the South, the Court, under Salmon P. Chase and other northern judges, erected a dyke against the reaction.

More recently, when the Federal Government encroached on local self-government, the Court, under Hughes, threw up the barricade of judicial protection.

The Supreme Court does not determine or change policy. Its action is but a brake on speed. In due time, change of the fundamental law can be made in conformity to the well-settled public opinion and the prescribed methods.

Its power is simply the authority to dispose of a controversy before the Court in which one citizen who is a party to a case claims rights guaranteed to him by the Constitution. It is not the absolute negativing or revision of law. This was refused by the Constitutional Convention.

If public opinion should desire centralization of a power in Washington and diminution of local self-government, the negation by the Court of Congressional acts can be surmounted by amendments.

However, I believe in the principle so precisely stated by Calvin Coolidge:

> No method of procedure has ever been devised by which liberty could be divorced from local self-government. No plan of centralization has ever been adopted which did not result in bureaucracy, tyranny, inflexibility, reaction, and decline. * * *

The record of the Supreme Court has been great and good. The perpetuity of our free institutions will be secure just so long as the people freely give obedience and respect to the judgments of the Court.

Address of
Hon. Ulysses S. Guyer
Representative from Kansas

The SPEAKER. Members of the House of Representatives: As you are doubtless aware, this is the one hundred and fiftieth anniversary of the first convening of the Supreme Court of the United States. I understand that appropriate ceremonies befitting this anniversary have already been held in the building of the Supreme Court of the United States; however, it was thought entirely fitting and proper, inasmuch as that great Court very kindly joined the House of Representatives and the Senate some weeks ago in celebrating the one hundred and fiftieth anniversary of the convening of the first Congress of the United States, that some notice should be taken of today's important historic event by the House of Representatives. Two Members of the House have kindly agreed to deliver addresses appropriate for the occasion.

It gives me very great pleasure to present to the House of Representatives the gentleman from Kansas [Mr. GUYER]. [Applause.]

MR. SPEAKER and MEMBERS of the HOUSE OF REPRESENTATIVES:

First, permit me to say that I deem it a distinguished honor to appear on this program with the beloved chairman of the Committee

on the Judiciary, the gentleman from Texas, Hon. Hatton W. Sumners, whose greatness of heart, mind, and legal attainments eminently qualify him for a seat on the illustrious Court whose sesquicentennial we celebrate today.

On the one hundred and fiftieth anniversary of the first session of the Supreme Court of the United States we naturally turn to the Convention which created not only the Supreme Court but also the Government of our beloved country.

The men who assembled in Philadelphia on Friday, the 25th of May 1787, to write down upon parchment for the first time a scheme for a government for the preservation and evolution of liberty had the most overwhelming task ever placed before a group of men since the morning stars sang together, and, judged by the work they wrought, were the greatest and wisest assembly of men that ever surrounded the council tables of any nation in all the tide of time. Their wisdom is patently illustrated by the obvious fact that these wise men seemed to know more then, even about so simple a matter as the proper time to convene the Congress, than we did after 150 years of experience. The so-called "lame duck" amendment lacked a single virtue or advantage while its faults are legion—an amendment induced by the urge and itch to change the Constitution as often as possible in spite of the sage admonition of Washington concerning "the spirit of innovation."

In 1858 Abraham Lincoln, with characteristic lucidity, stated the problem that confronted these devoted patriots when he declared: "It has long been a grave question whether any government, not too strong for the liberties of the people, can be strong enough to maintain itself in a great emergency." Through that long, hot, dusty summer of 1787 that devoted company of patriots struggled to find an answer to the grave question expressed long after by Abraham Lincoln in the gathering storm clouds that enveloped him in the years just prior to 1861. On September 17, when they were ready to sign the proposed Constitution, they had created a government which

was to prove not too strong, even to trample upon the rights of a slave with shackles on arms and ankles, yet strong enough to maintain itself in the face of the greatest emergency that ever confronted a republic in the history of the earth.

You have seen the milky way, that mysterious belt of light flung like a silver mantle across the shoulder of night. What is the milky way? Uncounted millions of stars larger and brighter than our sun, yet so far away that their light comes to us only in those broken and shattered fragments that leave that romantic trail of light out yonder on the far horizon of the universe. All that staggering vastness of the universe, in which our earth is but a speck of dust, is held together and in perfect harmony by two forces. One pulls toward the center, the other away from it. One is centripetal, the other centrifugal.

In government there are two corresponding forces. One pulls toward the center, the other away from it. One is centripetal and the other centrifugal. One tends toward order, the other toward chaos. One toward organization, the other toward disintegration. One toward despotism and the other toward anarchy.

The task of our fathers at Philadelphia was to devise a government in which the centripetal and the centrifugal forces would be so balanced that there could be neither despotism nor anarchy, balanced so nicely, like the stars and planets in the palm of the Almighty, that we can predict for years in advance when there will be an eclipse of the sun or moon. The men who framed our Constitution were familiar with the history of the ages and their philosophies from Plato to Adam Smith, whose "Wealth of Nations" had just before reached America.

The stories of Babylon and Egypt, of Greece and Rome, were commonplace with them. The records of the past were searched for the dangers that would lurk in the path of a government for free men. But when these patriots had done all they could, when they had formed a plan of government with a written constitution, they had

only the blueprints of a government—a skeleton without flesh and blood or the breath of life. Out of that noble plan must be evolved a government with arteries and veins, with flesh and blood—a living government. And that is just what has happened in these 150 years. Along with the other departments of the government, our judicial system with the Supreme Court as its head developed and rendered this a government of laws and not of men. The Supreme Court that John Jay found on the first day of February 1790 was without form and void. It too, like the whole scheme of our government, must develop and evolve under the Constitution and ever according to the spirit and the letter of that Constitution.

The struggle of the Supreme Court to secure its integrity is one of the most intriguing romances of the political history of the United States. The Supreme Court, in the second decade of our national life, became the center of a raging tempest of party passion not exceeded in our history. At that time the President of the United States demanded that a judge should be expelled from the Court by request of the two Houses of Congress, impatient of the process of impeachment provided by a wise Constitution. This demand by the President was in wide contrast to President Jefferson's ringing statement concerning the formation of the Commonwealth of Virginia. In his "Notes on Virginia" he declared:

> The concentrating of these (the executive, legislative, and judicial powers) in the same hand is precisely the definition of despotic government. An elective despotism was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among the several bodies of magistrates, as that no one could transcend their legal limits without being effectually checked and restrained by the others. For this reason that convention which passed the ordinance of government laid the foundation on this basis, that the legislative, executive, and judiciary departments should be separate and distinct so that no person should exercise the powers of more than one of them at a time.

That was a noble statement of the whole history of a free government where no man would ever be permitted to trample on the rights

of another be he executive, legislator, or judge. It provided a government of checks and balances in which no department could rule alone. If the executive became tyrannical the Court could call a sudden halt. If the legislature transcended the authority of the Constitution in its laws the Court could interfere. If the judge became corrupt or brought reproach upon the judiciary he could be impeached.

A half century before the Constitution was written, Montesquieu, whom Madison termed the "Oracle of Liberty," discovered this principle of free government when he declared:

> There can be no liberty when the legislative and executive powers are united in the same person or body of magistrates because apprehension may arise lest the monarch or the senate should enact tyrannical laws to execute them in a tyrannical manner.

That, coupled with Aristotle's vague suggestion of three agencies or departments of government, was the germ of the idea that led the makers of the Constitution of Virginia, and afterward of the Constitution of the United States, to adopt the system with three independent departments, and I am sure that if Thomas Jefferson had been present when our Constitution of the United States was framed, he would have been most insistent upon adopting that kind of a government, even if, when President, he contemplated the impeachment of all the judges of the Supreme Court, including his illustrious cousin, John Marshall, in direct opposition to the theory of an independent judiciary. Thomas Jefferson was human and he permitted his partisan enthusiasm to overcome his fundamental principle of three independent departments of government. Anyway, we can forgive him, because he ignominiously failed to break the power of the Supreme Court, which John Marshall had galvanized into the greatest tribunal of justice that ever existed on earth. And because, too, that every time that illustrious Court has been assailed, and the storms of vituperation and passion have spent themselves, that Court always has emerged stronger than ever before.

Those victories were all the more satisfactory because the Court viewed the storm with characteristic silence, and without "purse or sword," employing no promoter of propaganda, no hired press agents to circularize the Nation, no largess of the people's money to dole out to purchase the public favor, no bureau of defamation to answer the assaults of demagogs, and no defense except the devotion of the people, whose rights and liberties it has sheltered and enshrined. Amid all the vindictive storm of passion and political wrath it has remained the most majestic tribunal on earth.

In that 150 years great judges have upheld the record of the Court of John Marshall and Roger B. Taney, whose combined services covered 63 years and helped to construct this majestic tribunal; but all of them could not have wrought this work and built this mighty Court alone. Back behind them at the Nation's firesides the fathers and mothers helped with their support and prayers to build its majesty—to buttress it with the resistless power and invincible strength of public opinion.

Who else built it? The pioneer out on the fringe of the desert, the pioneer out on the Santa Fe and the Oregon Trails, the most romantic trails that ever mapped the frontiers of the earth or that ever blazed the path of empire. They built it in the campfires, where danger haunted their bivouac. They built it in the fields, where disappointment mocked and where gaunt famine stalked. They built it in the little red schoolhouses, where the children loved their books. The soldiers built it on a hundred battlefields when they died for liberty. The mothers at the hearthstones and at the cradles built it, built it in the fathomless blue of their babies' eyes. They built it in the churches, where they gathered to worship their God. John Marshall and Joseph Story built it; William Howard Taft and Charles Evans Hughes built it; Washington and Madison built it; Hamilton and Jefferson built it; Lincoln and Douglas built it; Grant and Lee built it. Victor and vanquished built it. Nobody was always right, but right always triumphed in the end. They all helped to build it in love of country

and mankind. May God bless all who aided in shaping its stately form and its mighty destiny.

For a century and a half it has compelled the admiration of all the people of the earth as a symbol of virtue and righteousness. For there was never a time in the history of the earth, since amid the splintered lightnings of Sinai, when the beginning of all law came direct from the lips of God Himself, when the rights of the poor and the needy, the weak and the downtrodden, were guarded with more energy and girded about with more jealous care. Thanks to our judicial system, with this illustrious Court at its head. Let no impious hand profane its record or threaten its integrity. We did not build it for today nor for tomorrow; we built it for the centuries. We commit it to the future. Its past is secure. Here may innocence always find sanctuary. Here may the weak ever find refuge. Here may law and order reign. Here may the Constitution be revered. Here may tolerance and fraternity be held sacred. Here may generations yet unborn realize their hopes and ambitions. Here may it stand like the steadfast souls of John Marshall and his fellow jurists, untarnished and unblemished by sordid avarice or unholy ambition, unshaken by weakness or fear, independent and incorruptible, let it stand adamant for all the centuries to come, for without all this its majesty is but mockery, its strength is sand, for when—

> The tumult and the shouting dies,
> The captains and the kings depart;
> Still stands thine ancient sacrifice,
> An humble and a contrite heart.
> Lord God of Hosts, be with us yet,
> Lest we forget—lest we forget.

"God save the United States of America and this honorable Court."

The SPEAKER. I now have the distinguished honor of presenting the able and beloved chairman of the House Committee on the Judiciary, the Honorable Hatton W. Sumners, of Texas.

Address of
Hon. Hatton W. Sumners
Representative from Texas

Mr. Speaker and Members of the House of Representatives:

First, may I express my very great appreciation for the generous remarks of my distinguished colleague, the gentleman from Kansas, Mr. Guyer, to whom you have just listened. I appreciate, as I know you do, the very eloquent address which we have just heard.

I want to speak to you on this occasion in a very plain, practical sort of way; on this, the one hundred and fiftieth anniversary of the inauguration of the Supreme Court, I want to give you, if I can, the picture of our constitutional development, the place which the Supreme Court holds in that scheme, and particularly the responsibility that rests upon you and me in this the one hundred and fiftieth year after the inauguration of the last of the three great departments which constitute the functioning machinery of this Government. The first President had been elected, of course; the First Congress had convened on March 4 of the preceding year. On the next day after Congress convened a Committee on the Judiciary was appointed. The Judiciary Act was approved by Washington on September 24, 1789. John Jay, of New York, was nominated to be Chief Justice; Rutledge, of South Carolina; Cushing, of Massachusetts; Harrison, of

Maryland; Wilson, of Pennsylvania; and Blair, of Virginia, to be Associate Justices. Harrison declined to serve and James Iredell, of North Carolina, was appointed in his stead. Thus was inaugurated the last of the three departments of the Federal Government. It was an independent judiciary. The independence of the judiciary had been secured by two provisions of the Federal Constitution. One is that "Judges shall hold their office during good behavior," the other provides that they "Shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office."

Origin of the Independence of the Judiciary

The notion of an independent judiciary did not originate with the Federal Constitutional Convention, however; the origin and evolution of the chief of these provisions securing the independence of the judiciary is typical of most of the provisions in our written constitutional structure. They each originated in necessity and practically all of them had been tested by experience for a long time before the beginning of our independent governmental existence.

For a long time prior to the coming of William and Mary to the British throne there had been much complaint and bitter resentment over the fact that the Kings of England, who appointed the judges, and especially during the regime of the Stuarts, either directly or indirectly controlled their judgments. Public opinion condemned that practice and public purpose set about its correction. In the Acts of Settlement of the Succession with William and Mary in 1701 it was provided that judges "shall hold office as long as they behave themselves well." This provision originated out of the necessity to correct a definite, well-recognized maladjustment of the machinery of government. But it did not complete the correction. Later it was discovered that the tenure of the judges terminated with the demise of the King. So, when George III came to the throne some 59 years afterward in 1760, to correct that condition it was provided, as one of the first if not the first act of his reign, that judges should hold office

as long as they behaved themselves well, notwithstanding the demise of the King.

As indicating the trend of constitutional development on that side of the Atlantic, moving power away from its centralization in the King, later on, in the reign of King George it became an axiom of the British Constitution that in the event of a disagreement between the Parliament and the King, any appeal taken to the people through the medium of an election should be made by the ministry and not by the King. This was consummated 5 or 6 years after the adoption of our Federal Constitution. Internally they were decentralizing. They had long been a nation. Internally we were centralizing; we had not yet become a nation. In order to have the whole picture of those times it is well to have in mind that there were then approximately half as many people in the Colonies as in England, in round numbers 8,000,000 people in England and 4,000,000 on this side of the Atlantic.

The Constitution Developing on Both Sides of the Atlantic

During the period of colonization, while we were bargaining with the British Crown, it to induce us to emigrate to America, and we for sufficient privileges and liberties to induce us to emigrate, and were writing the resultant negotiations into the terms of the royal charters of the Colonies, things equally as important bearing directly upon our own constitutional structure and the place of our Supreme Court in our structure of government were taking place on the other side. Our own Constitution was being shaped at the same time on both sides of the Atlantic. As we have seen, the independence of the Court which we inaugurated 150 years ago was fixed in our Constitution by our ancestors in 1701 in the Acts of Settlement.

At the time this provision of the Constitution, establishing the independence of the judiciary, was being presented to and accepted by William and Mary, there was also presented to them the Bill of Rights, which was accepted. It contained the following provisions,

which were later incorporated into our written constitutional structure:

> That levying money for or to the use of the crown, by pretense or prerogative, without grant of parliament, for longer time or in other manner than the same is or shall be granted, is illegal. That it is the right of the subjects to petition the king and all commitments and prosecutions for such petitioning are illegal. That the raising or keeping a standing army within the kingdom in time of peace, unless it be with the consent of parliament, is against law. That elections of members of parliament ought to be free. That the freedom of speech, and debates or procedure in parliament, ought not to be impeached or questioned in any court or place out of parliament. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. That jurors ought to be duly empanelled and returned and jurors which pass upon men in trials for high treason ought to be freeholders. That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void. And that for redress of all grievances, and for the amending, the strengthening, and preserving of the laws, parliament ought to be held frequently. And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties.

The Origin of the Constitution

If I could do only one thing in America, I would have it understood, and it is the truth, that while the men who met in the Constitutional Convention at Philadelphia were great men, they did not create the Constitution of this Government. I want to emphasize that. The Constitution of this Government has a higher authority than the words of men to support it. It came from a source higher than the source of any convention.

Your Constitution and mine existed in the very nature of things before there was any positive precept. It is perfectly evident when you examine life that the Almighty God intended that men should be free. I want you to think about that a minute. In God Almighty's economy He does not attempt to protect human beings against difficulties. In fact, He creates difficulties. The difficulties which we experience in operating a system of free government constitute a part of the gymnastic paraphernalia provided by God Almighty for the

development of people. The development of people is the central objective of Nature.

The love for liberty, the ambition to be free, the aspiration to be free, have not been given to us in order that we may merely enjoy the blessings of liberty but in order that we first may struggle to be free and gain strength by the struggle; second, that we may discharge the duties incident to freedom and gain strength by their discharge. That is the plan which God Almighty has intended. That is our plan. It is susceptible of proof. It could be proven before any jury on earth. Therein lies the security of our Constitution and the certainty that it cannot successfully be attacked by those whom we call the "reds" if we but understood it and do not forget that "eternal vigilance is the price of liberty."

Its provisions did not come from the speculations of political philosophers or the deliberations of conventions. They originated out of necessity and they were tried by experience among a people peculiarly gifted with the genius for self-government before we ever came to the responsibility of writing our State and Federal Constitutions. Therefore, our Constitution has supporting it human authority, the men who met in conventions, and in addition to that it is supported by the fact that it has stood the test of the ages.

It is not something that just came from the creative genius of some men, although human beings have helped.

The notion of a fundamental, natural law, supreme and dominant in the social and governmental relations of men, had taken firm root in the philosophy of thinkers as far back as Aristotle. Perhaps men have held to that conviction as far back as men have observed correctly and thought clearly and analytically. Cicero distinguished between summa lex, which existed according to his philosophy always before governments or written law, and lex scripta, written laws of man's making, which were to be regarded as void if they were contrary to the laws of nature.

In the Middle Ages such great jurists as Baden of France and Suarez

of Spain agreed with these views but went further and held that God had planted a consciousness of these laws in the mind and conscience of man, from which one's understanding of natural rights is derived, and held further that a statute which is contrary to natural justice is ipso facto void. Grotius was in general agreement with this philosophy. Coke, Fortescue, and Blackstone agreed. Blackstone held, however, that there was no power to prevent Parliament from violating the supreme law. However, he did not go so far as some of our American commentators have gone who say that the Constitution is what the Supreme Court says it is, or so far as some of the commentators on the British Constitution go who say that the British Constitution may be changed by the British Parliament. Neither of these statements is correct.

The Validity of Constitutions

There is no power to prevent the British Parliament from enacting a law contrary to the British Constitution but that violation of the British Constitution does not change the constitution. It is true there is no power to prevent an ignorant or venal supreme court, if there should come to be such a court, from falsely interpreting or falsely applying the provisions of the constitution, but the constitution would remain unchanged. We should merely have to await a happier day when the powers which had been abused and the trusts which had been betrayed should pass to fitter hands.

On both sides of the Atlantic, but chiefly on the other side, due to its longer history, the history of this people is replete with the record of great occasions and great achievements when the people, who had for a time been negligent, have aroused themselves and rescued their constitution and revitalized and reestablished it as the supreme law of the land.

One of these instances was the reestablishment of the independence of the judiciary to which I have referred, and while they were doing that they assembled into a documentary statement certain of their

fundamental rights, which they had long claimed as a part of their constitution, but which by the power of the kings and the construction of the judiciary which the kings controlled, had been denied to the English people. But these rights still lived.

When we came to write our Federal Constitution we brought forward into the written documents not only the provision with regard to the judiciary to which I have referred but the Bill of Rights as well. We did not borrow that Bill of Rights from the British Constitution or the provision with reference to the tenure of the judges from the British Constitution, as our commentators sometimes erroneously state. They belonged to us as much as they belonged to the people on the other side.

This seeming digression is in fact not a digression. It gives us a more comprehensive, though imperfect view of our general constitutional development, moving us toward the creation of our Supreme Court and the establishment in that Court of the powers which the Constitution assigns to it.

Obviously we can go no further into an examination of our constitutional development which took place on the other side of the Atlantic; neither shall we be able to examine the philosophy of Paine and others asserting the nonsupremacy of kings and parliaments and judges and human government as against the inalienable, natural rights of men, asserting the inherent limitation upon the fashion and power of governments and the discretion of governments and of their agents. We shall not be able, either, to examine the Colonial Charters, the forerunners of our State and Federal Constitutions, and in many respects the most interesting and most important part of our written constitutional development. In passing may I recommend especially an examination of the charter of Rhode Island granted in 1663. Everything considered, that charter of the little colony of Rhode Island, granted 277 years ago, is one of the greatest state documents of all time.

It is known, of course, that the State constitutions preceded the

Federal Constitution and contained all the basic provisions later incorporated in the Federal Constitution and many of its less important provisions as well.

Federal Government Development

Our Federal governmental development, in the scheme of which the Supreme Court has so large a place, both in its natural position and in the result of its decisions, began, no doubt, soon after the establishment of the American Colonies. The facts of common interest among the people of the Colonies, the influence of common origin, in the main, the same language, similar institutions, the same governmental instincts, community of interest, common dangers, and later joint achievements in behalf of the common interests, began early to draw and to press this homogeneous people back upon themselves into greater and greater solidarity and unity.

The articles of "Firm and Perpetual League of Friendship," entered into in 1643 between the jurisdictions of Massachusetts, Plymouth, Connecticut, and New Haven, have so many provisions and characteristics common to both the Articles of Confederation and the Federal Constitution as to leave no doubt of their close relationship. Just as the meeting called by Simon de Montford in the thirteenth century was the forerunner of the British Parliament this meeting and its resolutions were the forerunners of the Continental Congress, the Articles of Confederation, and of the Constitution of the United States.

We often hear the statement that the Revolutionary War was fought under the Articles of Confederation. The fact is that the Articles of Confederation were not ratified until the spring of 1781, and Cornwallis surrendered in the fall of that year. There is another erroneous statement, that when the Federal Constitutional Convention met, the Articles of Confederation were, figuratively speaking, thrown out the window. A comparison of the provisions of the Articles of Confederation and those of the Constitution and the weight of probabilities make that statement absurd.

The Supreme Court was not the first to function as such a court in this country. Prior to the adoption of the Articles of Confederation, the Continental Congress made of itself a semivoluntary Supreme Court in certain matters of the then inchoate and embryonic federal government. From their membership they selected what they first called a committee, and later on they created a court to which it was directed that appeals should lie from proceedings with reference to captured vessels. These vessels were being claimed as prizes of war. All sorts of conflicting interests and claims were growing out of these transactions. In some instances citizens of foreign nations were involved. During the siege of Boston, Washington was compelled to give much time to the adjustment of these controversies. He wrote a letter to the Continental Congress asking that something be done about it. In response, Congress requested that the colonies erect courts, where they did not already exist, to try issues arising out of such captures, and to allow juries in all cases, and that all appeals be to the Congress. Not only was this class of cases appealed to, and adjudicated by the tribunal created first out of the personnel of the Continental Congress, and later as a separate court, but a serious dispute between Pennsylvania and Connecticut over their boundary line was adjudicated by a court established under the Articles of Confederation. A great practical lesson was learned by those experiences, and later it became fixed in the Federal Constitution that there should be a Supreme Court of the United States, and that its judges should have jurisdiction of the class of cases adjudicated by these earlier federal tribunals.

Controversies, conditions, and the helpful services of a tribunal authorized to adjudicate such controversies, and the need for a governmental agency strong enough to enforce the judgments of such a tribunal, helped to impress the necessity of a "more perfect union," with a court clothed with such judicial powers as were later given to the Supreme Court by the Constitution.

While the independence of the judiciary had already been established, it remained to be determined in this country whether the Supreme Court of the United States has the power to declare void an act of any Federal agency, or of the States, which it deems to be in violation of the Federal Constitution.

The great controversy with reference to the Supreme Court, which arose out of the decisions of *Marbury* v. *Madison* (2 L. Ed. 60, 1803), of *McCulloch* v. *Maryland* (4 L. Ed. 579, 1819), and *Dartmouth College* v. *Woodward* (4 L. Ed. 629, 1819), and so forth, brought definitely to issue whether the Supreme Court has authority to declare an act of Congress and an act of a State unconstitutional.

We are all familiar with these great, far-reaching decisions. Jefferson challenged the authority of the Supreme Court to declare an act of Congress or an act of a State unconstitutional, contending, in substance, that the other two departments of the Federal Government and the States are each charged with a responsibility to the people of acting within their respective constitutional limitations; that our constitutional system provides an adequate remedy and practical machinery for its enforcement—popular elections. He felt that to give to the Supreme Court the power to declare the acts of agencies of the Federal Government and of the States void and also to be the sole judge of its own constitutional power is so incompatible with the nature of a democracy that it would destroy the Government.

Judge Roon, of Virginia, led the people of Virginia in their attack on Marshall. Marshall was very much aroused. He seems to have written many letters; he urged the necessity of the friends of the Government to arouse themselves; he considered that there was danger of a reaction toward the old Government under the Articles of Confederation. The thing which seemed to have affected him most is indicated by the following quotations from one of his letters:

I cannot describe the surprise and mortification I have felt that Mr. Madison has embraced them—

referring to Virginia's contentions, insisted upon by Mr. Jefferson.

Supreme Court Not the First to Decide Constitutional Limitations

It is an interesting fact that Marshall, however, was not the first to claim the right and the duty of the judiciary to pass upon the constitutionality of legislative and administrative acts. In an opinion by the Supreme Court of New Jersey, Holmes against Walton, 1780, though the record is not to be had, it seems clear that it was held that an act of the legislature providing for a trial by a jury of six men was void because it was violative of the New Jersey Constitution.

There was much controversy in the following session of the legislature with reference to this and other similar decisions. In the case of Commonwealth of Virginia against Caton, decided in 1782, the court gave the opinion that it had the power to determine the constitutionality of an act of the legislature and to declare those acts void which were contrary to the Constitution. Prior to 1814, there were numerous other State court holdings to the same effect in New York, Connecticut, North Carolina, South Carolina, Pennsylvania, Ohio, and Vermont.

Mr. Gerry, of Massachusetts, in the Federal Constitutional Convention in 1787 said:

> In some States the judges had actually set aside laws as being against the Constitution. This was done too with general approbation.

While there was much criticism of the decisions of Marshall, particularly in Virginia, Kentucky, and Ohio, there probably was fairly general approbation throughout the country.

In *Worcester* v. *Georgia* (8 L. Ed. 483), decided in 1832, the Supreme Court of the United States held that an act of the Georgia Legislature, undertaking to regulate missionaries among the Indians, was unconstitutional. The State of Georgia ignored this decision. The executive branch of the Federal Government refused to lend itself to the enforcement of this judgment. Finally, the matter ended by the missionary's being released after some 18 months' confinement.

This was perhaps the most severe blow which Marshall received during his long judicial career.

It is an interesting coincidence that Georgia had figured in another very important decision by the Supreme Court (*Chisholm* v. *Georgia,* 1 L. Ed. 440). Jay was then Chief Justice. It involved an action for debt by a citizen of another State against the State of Georgia. The decision, rendered in 1793, held that a State could be sued in the Federal courts at the instance of a citizen of another State. Two days after its rendition the eleventh amendment to the Constitution was proposed in Congress and the following December it was submitted. Ratification was not completed until the beginning of 1798. No action seems to have been taken in the matter, however. There were several suits similar to that of Chisholm against Georgia already pending. But before the first of these pending cases (*Hollingsworth* v. *Virginia,* 1 L. Ed. 644, 1798) reached the Supreme Court, the eleventh amendment had been ratified and the Court in a unanimous opinion held, in view of its phraseology, that the judicial power of the United States "shall not be construed to extend," instead simply that it "shall not extend" to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens, or subjects of any foreign state, that the amendment had a retroactive effect, and thus the Court would renounce jurisdiction in any case of this nature, past or present.

It is worthy of note that when the judgment against the State of Georgia was affirmed, Georgia responded by a statute prescribing the death penalty against anyone who would undertake by any process to enforce the judgment within the State.

Lessening Judicial Restraint Upon Other Governmental Agencies

With the election of Jackson in 1828, the fight on the policies of Marshall was renewed with great vigor. Chief Justice Taney, who had been in Jackson's Cabinet, was a great influence in the Supreme Court in lessening the restraint which that Court had exercised upon the States and departments of the Federal Government.

It is not at all improbable, if we had time to examine beneath the surface of developments as they are given to us by the historian, we might discover that one of the reasons for the change in the policy of the Supreme Court might have been the fact that union among the States at the time of the change had by natural processes made considerable progress. It is not improbable that it was a natural thing that the Supreme Court should have been instrumental in helping to concentrate governmental power at the point where this union was taking place. Public opinion, the arbiter in disputes affecting the public interest, probably helped determine the matter. As when a broken bone is being healed or the parts of plants are being engrafted upon each other, nature seems to move its energies to the point of weakness, to strengthen it by what means it can, until the unifying fibers by natural processes shall have done their work.

It may be also that Marshall was so absorbed by his concern for the establishment and preservation of a strong central government that he overlooked or underestimated the importance of preserving the efficiency and virility and fundamental sovereignty of the several State democracies which had created the Federal organization as their agent to do for them certain things which individually they were not able to do and to act as the repository of certain governmental powers which they each surrendered to the others.

On the other hand, Jefferson and Jackson and their associates may have underestimated the necessity at that time of permitting governmental strength to move to the points in the governmental structure where union among the States was being effected by natural processes, but had not yet become an actuality. These observations are not so fantastic as at first consideration they may appear.

Movement of Governmental Power During the National Formative Period

In the whole process of national development, when tribes are blended into principalities and principalities into petty governments

and these petty governments into a great nation, it is a historical fact that governmental power moves up from the people and from the smaller units of government to the point where union among the newly associated peoples and territories is being effected. That always happens. It seems to be in response to natural law. Clearly the adoption by the States of the Federal Constitution did not unite the people of the States; it did not constitute of them a nation.

I do not believe there is anything more interesting than the history of our own Union—the history of how we came to be a nation—the history of how we got into the big row in 1861. I think it is perfectly clear as we look back at it now. An examination of the debates in this Congress discloses the different stages of the growing together of these States. The Constitution was like the tape wrapped around plants being grafted. If there be proper adjustment, if there be kinship in those plants, Nature gets to work—Nature did get to work. If we had the time, I would like to direct your attention to significant utterances on the floor of this House and in the other Chamber in the different crises of the country, showing clearly the relative stage of the development in our becoming a nation.

I will mention, however, one example. John Quincy Adams and 12 of his associates, when Texas was about to be admitted, issued an address to the people of the country in which they said that the admission of Texas would amount to a dissolution of the Union, and the non-slave-owning States would not, and should not, submit. Just across the river here was a gentleman—Wise, of Virginia, who was in this House—and it made him very angry—the idea of these Yankees uttering these treasonable things right here in the Hall of Congress—and he moved to expel them. Seventeen years after that Wise was the head of a Confederate regiment trying to put into effect the doctrine which Adams had declared, and the Adams crowd were having conniption fits about these things that Wise and his people were doing. If it were not so closely associated with that great tragedy, it would be an amusing thing.

We do not have time to examine the details of that development. It is sufficient for us to note at this time that we have come to be a nation. We were overlong in arriving at our nationalization, due primarily to the fact that in the beginning the institution of slavery as a foreign substance was left in the Constitution lying between the two great sections, North and South, and soon there was added to it the policy of the protective tariff. The States of the two sections had long been united.

Each of the great sections, when in control of the Federal organization, used that organization to promote and protect its interests with regard to these two issues. Lying side by side, these two issues were too thick for the fibers of union to penetrate. As a result, under the increasing strain, in 1861, we broke at this point of weakness. The Southern States which theretofore had denounced the doctrine of secession which had come from Northern States, having lost control of the Federal organization, pulled apart, seceded. The Southern States seceded because they had lost control of the Federal Government. The Northern States did not secede because no one secedes from that which he controls.

As a result of the War between the States, one of these foreign elements was removed, and as a result of economic developments the protective tariff has been largely absorbed into the general economic and political body of the two sections. We are now a nation united.

Governmental Progress in a Democracy

We have been a nation, probably since the Spanish-American War, certainly since the World War. When a people, operating our sort of government, have reached that stage in their national development, it is a historically established fact, and one with which reason has no difficulty in agreeing, that from that time forward all progress in such a government must be in that direction which moves govern-

mental power away from the central organization to which it was moved at the time when the processes of unification were taking place or great emergencies were being dealt with, back into the smaller units of government which are the natural instruments for the functioning of a democracy. Democracy is a government by the people. In order for the people to govern and to continue to develop their capacity to govern they must have the power to govern and the necessity to govern as close to them as it is practical to place it, and there must be provided for their use governmental machinery adapted to the exercise of these functions by the people.

For too long a time we have overemphasized the Federal organization in our scheme of government. We ought to have been moving this overallocation of power and governmental responsibility away from it long ago. Just as Nature moves strength to the point of union when union is being effected, when union has been effected, it requires of peoples operating systems of free government to move that power back into their democratic governmental organization, or pay the penalty which Nature inflicts upon a people who have had an opportunity to cooperate with the plan of Nature and refuse to do it. That is something for the statesmen of America to think about. If the people will not do it voluntarily, they are driven by the lash of tyranny to the performance of their neglected duty. I challenge anybody of any political philosophy to contradict the statement that it is a historically established fact and in harmony with reason that after the formative period of a democratic nation there can be no progress in that system except in that direction which moves the power and necessity to govern away from the center and back toward the people, who are the government.

We are not dealing with an academic thing. We are not dealing with a speculative thing. We are dealing with something that is supported by history and to which common sense must agree, because in a democracy there are no governors except the people.

The States' Governmental Machinery Adapted to Requirements of Democracy

Fortunately for us, the States, not too large territorially and which function in the main through smaller units of government, the chief officers of which are chosen by the people, afford the opportunity and the machinery for the functioning and development of democratic institutions, and for the development of the governmental capacity of the people, who are the governors in a democracy.

In our whole governmental history all commentators, insofar as I know, agree that the Habeas Corpus Act, the Magna Carta, the Petition of Rights, the Bill of Rights, and our own Declaration of Independence made great epochs in governmental history, because their effect was to decentralize governmental power and move it back toward the people. On the other hand, no great monument can be found along the road which democracy has traveled, marking the place where governmental power and responsibility have been moved away from the people toward the central governmental agency. That is not progress in a democracy.

The Federal organization is a necessary agency of these States to do the things for them which it was created by them to do, but it was never intended to be and never can be the functioning machinery through which the people can discharge the general responsibility of government. It is too big, too far away; the total of its general responsibilities too vast. Its machinery is not adapted to that service. Out of an executive personnel which has now grown to the enormous number of 987,538 persons as of the month of December 1939, at an annual salary as of that month of $1,827,678,708, only one of this approximately 1,000,000 people is elected. There cannot be any possibility of popular control of such an organization.

Effect Upon Democracy of Loss of State Sovereignty

The States must resume the status of the responsible sovereign agencies of general government or democracy cannot live in America.

What is the use in trying to deceive ourselves about that?

When we relieve the States of governmental responsibilities which are within their governmental capacity, the power to do the things of which they have been relieved departs from the States. Nature will not permit any power to remain where it is not used. Every time that happens the total governmental strength of the States is lessened and they are left with less and less ability to discharge their remaining duties.

There can be no uncertainty as to the effect of that policy upon the States, especially, when, in addition to that, we tap the sources of State revenue; bring to Washington the money required by the States to discharge their governmental duties; send a part of that money back to the States as loans and gifts from the Federal Government to the subdivisions of the States, their counties, their cities, their school districts, private businesses, and private citizens, and thereby, in these matters, attach them directly to the Federal Government and bring them directly under the operation of the Federal governmental power.

By this process we are not only weakening the States but are actually dissolving them. At the same time, we are destroying the self-reliance, the courage, the stamina, and the governmental capacity of their subdivisions and of the people—the most deadly thing that can be done to a democracy. When we do all these things, we do what the declared enemies of our democracy could not do to the structure of our Government and to the governmental capacity of the people, upon whose capacity to govern our democracy absolutely depends.

It is axiomatic in our system of government—and I think it is axiomatic everywhere—that he who controls the purse strings controls the government. This was demonstrated when the House of Commons got control of the purse strings in England. It took a long time, but now the Commons are supreme because they never turned loose the purse strings.

We are making a similar demonstration in this country, except that it is in exactly the opposite direction. As we increase State and

local governmental dependence upon the Federal Treasury, dispensing money which has been got from the people of the States, the Federal bureaucracy tightens its grip upon the purse strings and increases its governmental control.

We have turned back on the course of democratic progress. Progress is not fast. We are going very fast. Progress is uphill. We are going downhill. That is the easy way.

Democrats, Republicans, people of the Nation today celebrating a great occasion, we talk about what these men have done in the days gone by. What are we doing? How well are we doing it? No foreign foe has put his foot on American soil in a hundred years. We have everything in this country that God could give to make a people happy, prosperous, and contented—plenty of material for food, clothing, and shelter; plenty of railroads; plenty of money; plenty of means; plenty of everything—plenty of everything except the intelligence and patriotism required to operate a system of free government. Yet we strut around here and expect people to call us honorable. Shame upon us in America! Shame upon the statesmanship of America! We are all responsible. I take my share and you can take yours.

When we destroy the independent governmental responsibility of the States, the sovereignty of the State is destroyed and the possibility of the preservation of democracy is practically gone. What I am saying is fundamental. I am talking about things that are fundamental, vital things, as important to me and to you as the love for liberty. I am not talking about anyone, I am talking about a situation; I am talking about the result of the operation of the laws of cause and effect.

As it was the responsibility of our people 150 years ago to establish the Federal organization, in just as definite a sense it is our responsibility to preserve this democracy, not only for the sake of the democracy but for the sake of the Federal organization as well. There can be but one end to a policy of continuing to weaken the structure of

the underlying States and at the same time continuing to increase the Federal overload.

This is not a partisan matter; it is not a sectional matter; it is not that of any department. None are free from responsibility. It is the concern and business of all the people, of all the parties, and of all the officials of all the departments of government, Federal and State.

Whether you agree with me or not, I hope that what I have said will be received in the spirit in which it is spoken, and that it will be provocative of thought and of an examination of the facts.

You and I are in responsibility at the high peak of human history, charged with a duty different from that which Madison confronted, different from that which Marshall confronted. They and the statesmen of that time were confronted with the responsibility of helping to hold these States together until they could grow together and form a nation. It was their business to preserve this Nation. It is our business to preserve this democracy.

No greater challenge ever came to any people of any age than the challenge which comes to you and me at this time. It is well for us on this, the one hundred and fiftieth anniversary of the inauguration of the Supreme Court, celebrating as we do a great event in the history of our Government, to be conscious of the fact that we are in responsibility at a time when deliberate persons of sound judgment are deeply concerned for the future of this country. Only a people humbled by the sense of great responsibility, earnestly desiring to know the truth, candid enough to face it, whatever it may be, and courageous enough to do what duty requires, whatever the sacrifice, can make certain the preservation of this democracy.

Chief Justices of the United States

JOHN JAY, N. Y.; [Washington], commissioned Sept. 26, 1789; resigned June 29, 1795; declined reappointment on Commission of Dec. 19, 1800; died May 17, 1829; interment Jay Family Cemetery, Rye, N. Y.

JOHN RUTLEDGE, S. C.; [Washington], commissioned July 1, 1795; nomination rejected by Senate Dec. 15, 1795; died July 23, 1800; interment St. Michael's Cemetery, Charleston, S. C.

WILLIAM CUSHING, Mass.; [Washington], commissioned Jan. 27, 1796; declined appointment, but continued as Associate Justice.

OLIVER ELLSWORTH, Conn.; [Washington], commissioned Mar. 4, 1796; resigned Sept. 30, 1800; died Nov. 26, 1807; interment Old Cemetery, Windsor, Conn.

JOHN MARSHALL, Va.; [Adams], commissioned Jan. 31, 1801; died July 6, 1835; interment Shackoe Hill, Richmond, Va.

ROGER B. TANEY, Md.; [Jackson], commissioned Mar. 15, 1836; died Oct. 12, 1864; interment Roman Catholic Cemetery, Frederick, Md.

SALMON P. CHASE, Ohio; [Lincoln], commissioned Dec. 6, 1864; died May 7, 1873; interment Oak Hill Cemetery, Washington, D. C.; reinterment Spring Grove Cemetery, Cincinnati, Ohio.

MORRISON R. WAITE, Ohio; [Grant], commissioned Jan. 21, 1874; died Mar. 23, 1888; interment Woodlawn Cemetery, Toledo, Ohio.

MELVILLE W. FULLER, Ill.; [Cleveland], commissioned July 20, 1888; died July 4, 1910; interment Graceland Cemetery, Chicago, Ill.

EDWARD D. WHITE, La.; [Taft], commissioned Dec. 12, 1910; died May 19, 1921; interment Oak Hill Cemetery, Washington, D. C.

WM. HOWARD TAFT, Conn.; [Harding], commissioned June 30, 1921; resigned Feb. 3, 1930; died Mar. 8, 1930; interment Arlington Cemetery, Arlington, Va.

CHARLES EVANS HUGHES, N. Y.; [Hoover], commissioned Feb. 13, 1930.

Associate Justices of the Supreme Court of the United States

JOHN RUTLEDGE, S. C.; [Washington], commissioned Sept. 26, 1789; resigned Mar. 5, 1791; died July 23, 1800; interment St. Michael's Cemetery, Charleston, S. C.

WILLIAM CUSHING, Mass.; [Washington], commissioned Sept. 27, 1789; died Sept. 13, 1810; interment Scituate, Mass.

*ROBERT H. HARRISON, Md.; [Washington], commissioned Sept. 28, 1789; died Apr. 20, 1790.

JAMES WILSON, Pa.; [Washington], commissioned Sept. 29, 1789; died Aug. 28, 1798; interment Johnston Burial Ground, Edenton, N. C.; reinterment Christ Churchyard, Philadelphia, Pa.

JOHN BLAIR, Va.; [Washington], commissioned Sept. 30, 1789; resigned Jan. 27, 1796; died Aug. 31, 1800; interment Bruton Parish Churchyard, Williamsburg, Va.

JAMES IREDELL, N. C.; [Washington], commissioned Feb. 10, 1790; died Oct. 20, 1799; interment Johnston Burial Ground, Edenton, N. C.

THOS. JOHNSON, Md.; [Washington], commissioned Aug. 5, 1791; resigned Mar. 4, 1793; died Oct. 25, 1819; interment All Saint's Episcopal Churchyard, Frederick, Md.; reinterment Mount Olivet Cemetery, Frederick, Md.

WILLIAM PATERSON, N. J.; [Washington], commissioned Mar. 4, 1793; died Sept. 9, 1806; interment Manor House Vault, Albany, N. Y.

SAMUEL CHASE, Md.; [Washington], commissioned Jan. 27, 1796; died June 19, 1811; interment Old St. Pauls Cemetery, Baltimore, Md.

BUSHROD WASHINGTON, Va.; [Adams], commissioned Sept. 29, 1798; died Nov. 26, 1829; interment Mount Vernon, Va.

ALFRED MOORE, N. C.; [Adams], commissioned Dec. 10, 1799; resigned Mar. 1804; died Oct. 15, 1810; interment St. Philip's Churchyard, Old Brunswick, near Southport, N. C.

WILLIAM JOHNSON, S. C.; [Jefferson], commissioned Mar. 26, 1804; died Aug. 11, 1834; interment West Cemetery, St. Philip's Church, Charleston, S. C.

BROCKHOLST LIVINGSTON, N. Y.; [Jefferson], commissioned Nov. 10, 1806; died Mar. 18, 1823; interment Vault, Wall Street Churchyard (Trinity Church), New York, N. Y.

THOMAS TODD, Ky.; [Jefferson], commissioned Mar. 3, 1807; died Feb. 7, 1826; interment Frankfort Cemetery, Frankfort, Ky.

*LEVI LINCOLN, Mass.; [Madison], commissioned Jan. 7, 1811; died Apr. 14, 1820.

*JOHN QUINCY ADAMS, Mass.; [Madison], commissioned Feb. 22, 1811; died Feb. 23, 1848.

JOSEPH STORY, Mass.; [Madison], commissioned Nov. 18, 1811; died Sept. 10, 1845; interment Mount Auburn Cemetery, Cambridge, Mass.

GABRIEL DUVALL, Md.; [Madison], commissioned Nov. 18, 1811; resigned Jan. 1835; died Mar. 6, 1844; interment Duvall Estate, Glen Dale, Prince Georges County, Md.

SMITH THOMPSON, N. Y.; [Monroe], commissioned Sept. 1, 1823; died Dec. 18, 1843; interment Livingston Burial Ground, Poughkeepsie, N. Y.

ROBERT TRIMBLE, Ky.; [J. Q. Adams], commissioned May 9, 1826; died Aug. 25, 1828; interment Paris Cemetery, Paris, Ky.

JOHN MCLEAN, Ohio; [Jackson], commissioned Mar 7, 1829; died Apr. 4, 1861; interment Spring Grove, Cincinnati, Ohio.

HENRY BALDWIN, Pa.; [Jackson], commissioned Jan. 6, 1830; died Apr. 21, 1844; interment Greendale Cemetery, Meadville, Pa.

JAMES M. WAYNE, Ga.; [Jackson], commissioned Jan. 9, 1835; died July 5, 1867; interment Laurel Grove Cemetery, Savannah, Ga.

PHILIP P. BARBOUR, Va.; [Jackson], commissioned Mar. 15, 1836; died Feb. 25, 1841; interment Congressional Cemetery, Washington, D. C.

*WILLIAM SMITH, Ala.; [Van Buren], commissioned Mar. 8, 1837; died June 26, 1840.

JOHN CATRON, Tenn.; [Van Buren], commissioned Mar. 8, 1837; died May 30, 1865; interment Mount Olivet Cemetery, Nashville, Tenn.

JOHN MCKINLEY, Ala.; [Van Buren], commissioned Apr. 22, 1837; died July 19, 1852; interment Cave Hill Cemetery, Louisville, Ky.

PETER V. DANIEL, Va.; [Van Buren], commissioned Mar. 3, 1841; died June 30, 1860; interment Hollywood Cemetery, Richmond, Va.

SAMUEL NELSON, N. Y.; [Tyler], commissioned Feb. 13, 1845; resigned Nov. 28, 1872; died Dec. 13, 1873; interment Lakewood Cemetery, Cooperstown, N. Y.

LEVI WOODBURY, N. H.; [Polk], commissioned Sept. 20, 1845; died Sept. 4, 1851; interment Harmony Grove Cemetery, Portsmouth, N. H.

ROBERT C. GRIER, Pa.; [Polk], commissioned Aug. 4, 1846; resigned Jan. 31, 1870; died Sept. 26, 1870; interment West Laurel Hill Cemetery, Philadelphia, Pa.

BENJ. R. CURTIS, Mass.; [Fillmore], commissioned Sept. 22, 1851; resigned Sept. 30, 1857; died Sept. 15, 1874; interment Mount Auburn Cemetery, Cambridge, Mass.

JOHN A. CAMPBELL, Ala.; [Pierce], commissioned Mar. 22, 1853; resigned May 21, 1861; died Mar. 13, 1889; interment Greenmount Cemetery, Baltimore, Md.

NATHAN CLIFFORD, Maine; [Buchanan], commissioned Jan. 12, 1858; died July 25, 1881; interment Evergreen Cemetery, Portland, Maine.

NOAH H. SWAYNE, Ohio; [Lincoln], commissioned Jan. 24, 1862; resigned Jan. 24, 1881; died June 8, 1884; interment Oak Hill Cemetery, Washington, D. C

SAMUEL F. MILLER, Iowa; [Lincoln], commissioned July 16, 1862; died Oct. 13, 1890; interment Oakland Cemetery, Keokuk, Iowa.

DAVID DAVIS, Ill.; [Lincoln], commissioned Oct. 17, 1862; resigned Mar. 4, 1877; died June 26, 1886; interment Evergreen Cemetery, Bloomington, Ill.

STEPHEN J. FIELD, Calif.; [Lincoln], commissioned Mar. 10, 1863; resigned Dec. 1, 1897; died Apr. 9, 1899; interment Rock Creek Cemetery, Washington, D. C.

EDWIN M. STANTON, Pa.; [Grant], commissioned Dec. 20, 1869; to take effect Feb. 1, 1870; died Dec. 24, 1869, before commission took effect.

WILLIAM STRONG, Pa.; [Grant], commissioned Feb. 18, 1870; resigned Dec. 14, 1880; died Aug. 19, 1895; interment Charles Evans Cemetery, Reading, Pa.

JOSEPH P. BRADLEY, N. J.; [Grant], commissioned Mar. 21, 1870; died Jan. 22, 1892; interment Mount Pleasant Cemetery, Newark, N. J.

WARD HUNT, N. Y.; [Grant], commissioned Dec. 11, 1872; resigned Jan. 7, 1882; died Mar. 24, 1886; interment Forest Hill Cemetery, Utica, N. Y.

JOHN M. HARLAN, Ky.; [Hayes], commissioned Nov. 29, 1877; died Oct. 14, 1911; interment Rock Creek Cemetery, Washington, D. C.

WILLIAM B. WOODS, Ga.; [Hayes], commissioned Dec. 21, 1880; died May 14, 1887; interment Cedar Hill Cemetery, Newark, Ohio.

STANLEY MATTHEWS, Ohio; [Garfield], commissioned May 12, 1881; died Mar. 22, 1889; interment Spring Grove Cemetery, Cincinnati, Ohio.

HORACE GRAY, Mass.; [Arthur], commissioned Dec. 20, 1881; died Sept. 15, 1902; interment Mount Auburn Cemetery, Cambridge, Mass.

SAMUEL BLATCHFORD, N. Y.; [Arthur], commissioned Mar. 22, 1882; died July 7, 1893; interment Greenwood Cemetery, New York, N. Y.

*ROSCOE CONKLING, N. Y.; [Arthur], commissioned Feb. 1882; died Apr. 18, 1888.

LUCIUS Q. C. LAMAR, Miss.; [Cleveland], commissioned Jan. 16, 1888; died Jan. 23, 1893; interment Riverside Cemetery, Macon, Ga.; reinterment St. Peters Cemetery, Oxford, Miss.

DAVID J. BREWER, Kans.; [Harrison], commissioned Dec. 18, 1889; died Mar. 28, 1910; interment Mount Muncie Cemetery, Leavenworth, Kans.

HENRY B. BROWN, Mich.; [Harrison], commissioned Dec. 29, 1890; resigned May 28, 1906; died Sept. 4, 1913; interment Elmwood Cemetery, Detroit, Mich.

GEORGE SHIRAS, Jr., Pa.; [Harrison], commissioned July 26, 1892; resigned Feb. 23, 1903; died Aug. 2, 1924; interment Allegheny Cemetery, Pittsburgh, Pa.

HOWELL E. JACKSON, Tenn.; [Harrison], commissioned Feb. 18, 1893; died Aug. 8, 1895; interment Mount Olivet Cemetery, Nashville, Tenn.

EDWARD D. WHITE, La.; [Cleveland], commissioned Feb. 19, 1894; resigned Dec. 19, 1910, to become Chief Justice; died May 19, 1921; interment Oak Hill Cemetery, Washington, D. C.

RUFUS W. PECKHAM, N. Y.; [Cleveland], commissioned Dec. 9, 1895; died Oct. 24, 1909; interment Rural Cemetery, Albany, N. Y.

JOSEPH MCKENNA, Calif.; [McKinley], commissioned Jan. 21, 1898; resigned Jan. 5, 1925; died Nov. 21, 1926; interment Mount Olivet Cemetery, Washington, D. C.

OLIVER WENDELL HOLMES, Mass.; [T. Roosevelt], commissioned Dec. 4, 1902; resigned Jan. 12, 1932; died Mar. 6, 1935; interment Arlington Cemetery, Arlington, Va.

WILLIAM R. DAY, Ohio; [T. Roosevelt], commissioned Feb. 23, 1903; resigned Nov. 13, 1922; died July 9, 1923; interment Westlawn Cemetery, Canton, Ohio.

WILLIAM H. MOODY, Mass.; [T. Roosevelt], commissioned Dec. 12, 1906; resigned Nov. 20, 1910; died July 2, 1917; interment Byfield Cemetery, Georgetown, Mass.

HORACE H. LURTON, Tenn.; [Taft], commissioned Dec. 20, 1909; died July 12, 1914; interment Greenwood Cemetery, Clarksville, Tenn.

CHARLES EVANS HUGHES, N. Y.; [Taft], commissioned May 2, 1910; resigned June 10, 1916; commissioned Chief Justice Feb. 13, 1930 [Hoover].

WILLIS VAN DEVANTER, Wyo.; [Taft], commissioned Dec. 16, 1910; retired June 2, 1937.

JOSEPH RUCKER LAMAR, Ga.; [Taft], commissioned Dec. 17, 1910; died Jan. 2, 1916; interment Old Summerville Cemetery, Augusta, Ga.

MAHLON PITNEY, N. J.; [Taft], commissioned Mar. 13, 1912; retired Dec. 31, 1922; died Dec. 9, 1924; interment Evergreen Cemetery, Morristown, N. J.

JAMES C. MCREYNOLDS, Tenn.; [Wilson], commissioned Aug. 29, 1914.

LOUIS D. BRANDEIS, Mass.; [Wilson], commissioned June 1, 1916; retired Feb. 13, 1939.

JOHN H. CLARKE, Ohio; [Wilson], commissioned July 24, 1916; resigned Sept. 18, 1922.

GEORGE SUTHERLAND, Utah; [Harding], commissioned Sept. 5, 1922; retired Jan. 18, 1938.

PIERCE BUTLER, Minn.; [Harding], commissioned Dec. 21, 1922; died Nov. 16, 1939; interment Calvary Cemetery, St. Paul, Minn.

EDWARD T. SANFORD, Tenn.; [Harding], commissioned Jan. 29, 1923; died Mar. 8, 1930; interment Greenwood Cemetery, Knoxville, Tenn.

HARLAN F. STONE, N. Y.; [Coolidge], commissioned Feb. 5, 1925.

OWEN J. ROBERTS, Pa.; [Hoover], commissioned May 20, 1930.

BENJAMIN N. CARDOZO, N. Y.; [Hoover], commissioned Mar. 2, 1932; died July 9, 1938; interment Congregation Cemetery, Cypress Hills, Long Island, N. Y.

HUGO L. BLACK, Ala.; [F. D. Roosevelt], commissioned Aug. 18, 1937.

STANLEY F. REED, Ky.; [F. D. Roosevelt], commissioned Jan. 27, 1938.

FELIX FRANKFURTER, Mass.; [F. D. Roosevelt], commissioned Jan 20, 1939.

WILLIAM O. DOUGLAS, Conn.; [F. D. Roosevelt], commissioned Apr. 15, 1939.

FRANK MURPHY, Mich.; [F. D. Roosevelt], commissioned Jan. 18, 1940.

*Denotes that appointee declined appointment; did not take the oath of office, and never became a member of the Court.

NOTE.—Names in brackets indicate the President making the appointment.

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