

# The Supreme Court in Transition— The Legacy, The Vision

*It is the spirit and not the form of law that keeps justice alive.*  
—Chief Justice Earl Warren



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In what direction will the U.S. Supreme Court travel under the leadership of Chief Justice John G. Roberts Jr.? How will his Court change our lives? Our country has enjoyed a rich legacy of chief justices. Now more than ever, the role of the chief justice and his Supreme Court will be critical to establishing the moral tone of America.

Supreme Court cases reach far beyond the concerns of individual litigants to influence all of us. Some cases are instantly recognizable: *Marbury v. Madison*, *Engel v. Vitale*, *Miranda v. Arizona*, *Brown v. Board of Education*, *Roe v. Wade*, *California v. Bakke* and *Bush v. Gore*. Whether the Court's decisions in these cases strengthened or weakened America's moral fabric continues to be argued.

The power and status of the Supreme Court were clearly established, confirmed, stretched and strengthened under the leadership of Chief Justices John C. Marshall, Earl Warren, Warren E. Burger and William H. Rehnquist. At the recent John Marshall 250th birthday gala in Richmond that celebrated the Virginia native's life, Justice Anthony M. Kennedy reminded all that Marshall—a federalist and arguably the Court's third chief justice<sup>1</sup>—believed in a strong central government. *Marbury v. Madison*, the opening case of constitutional law curricula across American law schools, established the principle of judicial review, allowing the Court to invalidate both federal and state laws when they conflict with its interpretation of the Constitution. *Marbury* established the Supreme Court's important role as the arbiter of the Constitution, and through that power, the agent to expand individual rights.

Ten chief justices and 116 years later, the Supreme Court was led by Earl Warren. During the late 1950s and 1960s, there were protestors for almost every cause, as Americans sought to define themselves and their nation. So, it was not surprising that, while earlier Courts stressed property rights, under Warren the Court's emphasis shifted to personal rights. Building on the power of judicial review, the Warren Court changed the nature of law enforcement, individual rights and civil rights through the landmark cases *Engel v. Vitale*, which outlawed mandatory school prayer; *Miranda v. Arizona*, which heightened the protections for

accused criminals; and *Brown v. Board of Education*, which declared that all citizens were to receive “equal protection under the law.” The Warren Court focused on First Amendment rights, affording protection to civil rights demonstrators and those who criticized public officials, and recognized new personal rights—like the right to privacy. The controversial cases of the Warren Court changed the nature of law enforcement, individual and civil rights. It has been said that Chief Justice Warren led his Court to “the most profound and pervasive revolution ever achieved by substantially peaceful means.”

The 1970s and 1980s saw a more conservative Court than the Warren Court, but it was just as active. Under the leadership of Chief Justice Burger, the Court profoundly influenced American jurisprudence. Its decisions included *Roe v. Wade* (abortion), *United States v. Nixon* (impeachment) and *University of California v. Bakke* (affirmative action). Burger was a strong advocate of the “strict construction” of the Constitution. It was not uncommon for Burger to vote to limit the decisions of the Warren period. Not one-dimensional, Burger also authored opinions upholding the right of trial judges to order busing as a remedy for school segregation, and he advocated for a unanimous Court upholding a subpoena for the Watergate tapes—leading to President Nixon's resignation. The Burger Court sought to enhance state powers under the Constitution.

The legacy of the Rehnquist Court is still being defined. Chief Justice Rehnquist was known as a strong promoter of federalism. His legacy includes the first modern limits on Congress's power under the Commerce Clause in *United States v. Lopez*. The Rehnquist Court was firm and visible—too visible for some. Rehnquist presided over the Clinton presidential impeachment trial and wrote a concurring opinion in *Bush v. Gore*. Notwithstanding the above, many would argue that the Rehnquist Court is best known for Associate Chief Justice Sandra Day O'Connor's swing opinions. O'Connor staked out the terrain, limited her opinions at times, and gave the Court the opportunity to rethink when it faced slightly different facts. History books are likely to reflect that Rehnquist led the Court in broadening state powers in the federal system.

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America's politics have changed from the days of Marshall and Warren. The legislative and executive branches are more complex than in the days of Warren Burger. America was recognized by the Rehnquist Court as multilayered and diverse, requiring that a Supreme Court move in tandem with the needs of the American people. What role will the Roberts Court play in twenty-first century America? The answer depends on who will make up his Court and what role those justices will play in shaping it.

The Supreme Court helps set America's moral tone. The Court does not operate in a vacuum: the justices' upbringing, personal decisions, politics, morals and surroundings unavoidably influence their decisions. The Supreme Court is the final judge in all cases involving laws of Congress and the Constitution. The ultimate responsibility of the Roberts Court is to adhere to the words written above the main entrance of the Supreme Court building—to ensure that “Equal Justice Under the Law” is afforded to all. ♪

Endnote:

- 1 True historians will argue that John Marshall was the fourth Chief Justice. There is no question that John Jay served as the first chief justice from 1789–1795. Historians differ on whether to count John Rutledge, a recess appointment who served as chief justice from August to December 1795 but was later rejected by the Senate, and William Cushing, who may have been chief justice for three days, from February 3–5, 1796. (Historians disagree as to whether he resigned or declined the appointment.) If you count both John Rutledge and William Cushing both as the second chief justice, Oliver Ellsworth would be the third and John Marshall the fourth. If you do not count them, then Oliver Ellsworth enjoys the second slot and John Marshall the third.