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HISTORY OF THE SUPREME COURT OF THE UNITED STATES

The Birth of the Modern Constitution recounts the history of the United States Supreme Court in the momentous yet usually overlooked years between the constitutional revolution that occurred in the 1930s and Warren Court judicial activism in the 1950s. The years 1941–53 saw the emergence of legal liberalism, in the divergent activist efforts of Hugo Black, William O. Douglas, Frank Murphy, and Wiley Rutledge. The Second World War and early Cold War years of the Court in reality marked the birth of the constitutional order that dominated American public law in the later twentieth century. That legal outlook emphasized judicial concern for civil rights and civil liberties, and reaction to the emergent national-security state. The Stone and Vinson Courts consolidated the revolutionary accomplishments of the New Deal and affirmed the repudiation of classical legal thought but proved unable to provide a substitute for that powerful legitimating explanatory paradigm of law. Hence the period bracketed by the dramatic moments of 1937 and 1954, written off as a forgotten time of failure and futility, was in reality the first phase of modern struggles to define the constitutional order that will dominate the twenty-first century.

William M. Wiecek is Congdon Professor of Public Law and Professor of History at Syracuse University, where he has been teaching since 1985. He holds a Ph.D. degree from the University of Wisconsin, Madison, and an LL.B. from Harvard University. He is the author or coauthor of numerous books, including, most recently, *The Lost World of Classical Legal Thought: Law and Ideology in America, 1886–1937* (1998), *The Oxford Companion to the Supreme Court of the United States* (1992), and *American Legal History: Cases and Materials*, 2nd ed. (1996). He has published articles in such journals as the *Supreme Court Review*, the *Journal of Supreme Court History*, the *American Journal of Legal History*, and the *Journal of American History*.

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VOLUME XII

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William M. Wiecek
Syracuse University

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CAMBRIDGE UNIVERSITY PRESS
Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

Cambridge University Press
40 West 20th Street, New York, NY 10011-4211, USA

www.cambridge.org
Information on this title: www.cambridge.org/9780521848206

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First published 2006

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication Data

The birth of the modern Constitution : the United States Supreme Court, 1941–1953 /
by William M. Wiecek.
p. cm. – (History of the Supreme Court of the United States ; v. 12)
At head of series title: The Oliver Wendell Holmes Devise.
Includes index.
ISBN-0-521-84820-2 (hardback)
1. United States. Supreme Court – History – 20th century. 2. Constitutional history –
United States. 3. United States – Politics and government – 1933–1953. I. Wiecek,
William M., 1938– II. United States. Permanent Committee for the Oliver Wendell
Holmes Devise. III. Title. IV. Series.
KF8742.A45H55 vol. 12
[KF8742]
347.73′26′09 s–dc22
[347.73/26/090] 2004028548

ISBN-13 978-0-521-84820-6 hardback
ISBN-10 0-521-84820-2 hardback

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To the memory of Paul A. Freund
Loeb Professor of Law, Harvard Law School, 1958–1976
First general editor of the Holmes Devise series
My teacher of Constitutional Law, 1960–1961

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Acknowledgments

Over the decade that this book was in preparation, I have accumulated scholarly debts. Syracuse University College of Law has provided me with an academic home and scholarly environment that was unstintingly supportive of a work so long in gestation. I note my special gratitude to Deans Daan Braveman and Hannah Arterian, who went out of their way to enable my writing, and to my colleagues at the College of Law. Its law library and staff, particularly Wendy Scott and Alissa Di Rubbo, assisted my research. It is a pleasure to acknowledge them here. Over the years, a dozen research assistants at the College of Law checked footnotes, compiled bibliographies, and verified quotations. At the risk of seeming invidious, I single out the work of Karen Bruner, Deborah Robinson, and Richard Grant, as making particularly significant contributions to the accuracy and scholarly apparatus of this book. (Needless to say, I alone am responsible for any errors that survived their diligence.)

Librarians and archivists elsewhere made scholarly research a pleasure. I acknowledge especially the courtesies of the staff at the Manuscripts Division of the Library of Congress. I found a similar welcome at the Special Collections department at the University of Kentucky; the Rare Books and Special Collections department at the Tarlton Law Library, University of Texas; the Special Collections department at the Harvard Law School; and the Roosevelt and Truman Presidential Libraries.

Stanley N. Katz, the second general editor of the Holmes Devise series, has been a mentor, friend, and inspiration for thirty years.

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I have followed the Bluebook citation formats for nearly all legal citations (*The Bluebook: A Uniform System of Citation*, 17th ed. [2000]) and a simplified MLA format for nonlegal books and journals (*MLA Style Manual and Guide to Scholarly Publishing*, 2nd ed. [1998]). The *Bluebook* might be helpful for nonlawyers trying to make sense out of the arcana of legal citation. I have used the following abbreviations to indicate archives:

FDR Library: Franklin D. Roosevelt Presidential Library and Museum, Hyde Park, New York

HLS: Harvard Law School Library, Special Collections (for the papers of Justice Felix Frankfurter and Judge Learned Hand)

HST Library: [Harry S] Truman Presidential Museum and Library, Independence, Missouri

LCMss: Library of Congress, Manuscripts Division

UKy: University of Kentucky, Special Collections and Archives (for the papers of Chief Justice Fred Vinson and Justice Stanley Reed). Sometimes a citation to this collection appears as: Stanley Reed Papers, new acquisitions, UKy. This refers to a then-recent acquisition of a trove of papers from Justice Reed's files that I was privileged to consult in 2001. I thank Mr. Jeff Suchanek of the Archives staff, who permitted me to work in these files even before they had been accessioned.

UMich: University of Michigan, Bentley Historical Library (for the papers of Justice Frank Murphy)

UT: University of Texas School of Law, Tarlton Law Library, Rare Books and Special Collections (for the papers of Justice Tom Clark)

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