

Index

deportation and, 450-51

AAA. See Agricultural Adjustment Act (AAA) ABA. See American Bar Association (ABA) Abstention generally, 761-62 civil liberties and civil rights and, 814-21 derivative actions, constitutional questions and, 758-59 Progressives and, 761-62 in Pullman Co. case, 820-21 rate-making and, 383, 387 Acheson, Dean, 769 ACLU. See American Civil Liberties Union (ACLU) Adams, Edward E., 1156 Adcock, J.D., 637 Addams, Jane, 612 Additur, 266 Adkins, Jesse, 225 Administrative law. See also Administrative state generally, xiii ABA on, 540-44 "administrative absolutism," 541 agencies resembling courts, 513 agency fact-finding, limits of, 456, 457, 458, 514 anti-confiscation doctrine, 445-49 balancing in, 541-42 business community, attitudes of, 513-14 civil service, presidential powers regarding, 474-75 (See also Civil service) codification attempts, 539-45 Congress and, 426-27, 429-30, 432-33, 439-40, 469, 470 conservatives and, 464-65, 512 constitutional facts, 443-44, 465, 469 constitutional limits on, 441, 449-50 courts versus, 542 criminal law and, 434 Crowell v. Benson (See Crowell v. Benson) deference and, 435 democracy and, 519 de novo review (See De novo review in administrative law)

Due Process Clause and, 433, 455, 463 emergence of, 87 expertise of agencies and, 433, 434, 472, 512 fairness and, 438-39, 530-31, 536-37, 538 FDR and, 13, 471, 511 First Amendment and, 441 formality of decision-making process, 535-36, 537 formulas in, 510, 525 in France, 512, 517, 541 "full hearing" requirement, 533-35, 536-37, 538 "fundamental" facts, 455, 457–58, 461 in Hughes Court generally, 431 "in accordance with law" standard, 459 independent judgment test, 520-21, 522-24 "intelligible principle," 436, 437–38, 439, 497-99 interest group pluralism and, 518-19, judicial power generally, 428, 429-30 judicial review and, 428, 429-30, 435, 464-65, 543 jurisdictional facts, 443-44, 450-51, 453-54, 457-58, 461, 469 Legal Realism and, 467, 510, 525 legislative authority and, 432-33 Morgan cases (See Morgan cases) NLRA and, 466, 470 NLRB and, 430, 468, 471 nondelegation doctrine in, 436, 437-38, 439 phases of judicial response to, 515-16 politicization of agencies, 514-15 president and, 427-28 presidential interference with agencies, 472-73 professionalism in, 517-18 Progressive vision of, 423-29, 430-31, 432-33, 449-50, 466-71, 512, 546-49 quasi-judicial bodies, 484, 534, 536 questions of fact versus questions of law, 429-30, 435 rate-making and, 441-43, 445-49 (See also Rate-making)



INDEX

Administrative law (cont.)	judicial review and, 89, 443
removal of executive officers (See Removal	Morgan cases and, 538–39
of executive officials)	New Deal and, 170, 437, 439, 546-47
St. Joseph Stock Yards case (See St. Joseph	nondelegation doctrine and, 176, 547
Stock Yards case)	Panama Refining case and, 180, 181–82,
"scientific" nature of, 542	184–86, 267
scope of review, 520–25	president and, 480
SEC and, 247, 430, 467–68	Progressive view of, 51, 170, 176–77,
as separate category of law, 467	376-77, 432-33, 440, 449-50, 466, 471,
separation of powers and, 435-45	487–88, 517, 1148
special interests and, 518–19	public policy and, 177, 437-38
specificity of statutes and, 439-40	rule of law and, 512
standards of review in, 89, 443, 445-49	separation of powers and, 435
"substantial evidence" standard in, 520–21,	Soviet Union as, 517
522, 523-24	technical nature of agencies in, 434
substantive constitutional law and, 467	"Affected with a public interest" test
substantive due process and, 449	generally, 1162
takings and, 441-43	"Constitutional Revolution of 1937" and,
tension between agencies and courts, 435	1160
traditionalists and, 434-35	employment agency fees, 68
valuation and, 441–43	formulas versus "conceptions of basic
veterans' pensions and, 433	needs," 65–73
Walter-Logan Bill, 544–45	ice companies, 70–73
workers' compensation and, 443-44	insurance agents, 68–70
Administrative procedure	legislative discretion versus judicial
Committee on Administrative Procedure,	obligation, 67
544, 545	in Nebbia case, 142-43, 272
expertise of agencies and, 515-16	price regulation and, 137–38
in ICC, 516–17	ticket scalping, 67
Progressives and, 514, 517	AFL. See American Federation of Labor (AFL
Administrative Procedure Act of 1946, 467, 768	African Americans. See also specific individua
Administrative state. See also	or case
Administrative law	AFL and, 613
Black on, 1026	CIO and, 613
Cardozo on, 184	class legislation and, 555
civil liberties and civil rights in, 451	Communist Party and, 707, 709, 714
civil service and, 472, 475	Democratic Party and, 613
conservatives on, 464–65	exclusion from juries, 261, 622, 624, 628–29
courts and, 515-16, 549	630–31
criticisms of, 435–36	as FDR constituency, 1043-44
Crowell v. Benson and, 455–56, 463, 470, 1148	labor and, 613
democracy, as threat to, 517	"labor disputes" and, 1090-91, 1092
economic planning and, 178	liberals and, 613, 619
evolution of, 90	lynching and, 614–15
executive branch and, 474	New Deal and, 613
expertise of agencies and, 467	Norris-LaGuardia Act and, 1090–91, 1092
fact-finding in, 440–41	picketing by as labor picketing, 1088-95
FDR and, 247–48, 471, 489–90	Populist Party and, 648–49
Federal Rules of Civil Procedure and, 540,	Progressives and, 610, 612-13
542-43	railroad "full crew" laws and, 793–94
foreign affairs and, 490	in railroad industry, 814–15
Frankfurter on, 423, 463, 467, 548	Republican Party and, 555, 671
Germany as, 517	"third degree" and, 611–12
Hughes Court generally, 13	Agricultural Adjustment Act (AAA)
Hughes on, 55, 89, 247–48, 459, 534–35	Agricultural Adjustment Act (AAA) Butler case (See Butler case)
Hughes on, 55, 89, 247–48, 459, 534–35 ICC and, 434	Agricultural Adjustment Act (AAA) Butler case (See Butler case) as class legislation, 218
Hughes on, 55, 89, 247–48, 459, 534–35	Agricultural Adjustment Act (AAA) Butler case (See Butler case)



INDEX

enactment of, 208-9 General Welfare Clause and, 199-200, 210, 944 invalidation of, 526 Justice Department and, 209 milk industry and, 1101 overproduction and, 205 public opinion on, 222 revisions to, 343-44 statutory interpretation, 921 stockyard rates and, 520 Tenth Amendment and, 210 Agricultural Marketing Agreement Act of 1937, 346–47, 349–50, 351–52, 358–59 Agriculture Department Morgan cases (See Morgan cases) rate-making and, 520, 533-35, 537, 538 Airplanes as vehicles, 579-81 Air-Way Electric Appliance Company, 821 Akerman, Alexander, 174 Alabama African Americans on juries in, 633-34 alcohol, excise tax on, 201 Ashwander case (See Ashwander case) Crowell v. Benson (See Crowell v. Benson) estate tax in, 365-66 integrated state-federal unemployment insurance scheme, 288, 290 Ku Klux Klan in, 316-17 lumber industry in, 174-75 Norris v. Alabama (See Norris v. Alabama) Patterson v. Alabama (See Patterson v. Alabama) Powell v. Alabama (See Powell v. Alabama) Scottsboro cases (See Scottsboro cases) Thornhill v. Alabama (See Thornhill v. Alabama) Alabama, University of, 314 Alabama Power Company, 757-58, 760, 769-71, 945, 946, 947, 950-51. See also Ashwander case Alaska, workers' compensation in, 905-8 Alaska Packers Association, 905-6 Albright, Robert C., 402 Alcohol excise taxes on, 201-2, 263 Prohibition (See Prohibition) Alexander Sprunt & Son, Inc., 764–65 Alien Acts of 1798, 380 Alien Registration Act of 1940, 380, 381 Allard, John, 495, 496 Allen, Florence, 951 Allen, O.K., 716 Allen, Robert, 916 Alliance Trust Company, 403-4 Allied High Commission Court of Appeals, 1066-67 Allred, James V., 816

Altmeyer, Arthur, 209 Alton Railroad case briefs in Supreme Court, 238-40 Commerce Clause and, 238, 242 compulsory versus voluntary plans, 239-40, 243 costs of compliance with statute, 239 dissenting opinion in, 243-44 Due Process Clause and, 240-41 existing private pension plans and, 238, 242 - 43factual background, 237 former employees and, 240-41 government strategy in, 238-39 lower court proceedings, 237-38 majority opinion in, 240-43 oral arguments in Supreme Court, 240 past services and, 241 railroad strategy in, 239-40 safety and efficiency issues, 238, 239-40, 241, 242 treating all railroads as single entity in, 241-42, 244 unemployment insurance compared, 288-89 workers' compensation compared, 243 Amalgamated Association of Iron, Steel and Tin Workers, 993-94, 1026 Amalgamated Association of Street, Electric Railway and Motor Coach Employees, 1010-11 Amalgamated Clothing Workers, 279 Amalgamated Utility Workers, 1021 Amazon Petroleum Corporation, 179, 180 American Bar Association (ABA) on administrative law, 540-44 civil procedure reform and, 888, 889-90 Court-packing plan and, 1070, 1143 in Gobitis case, 1131, 1132, 1138 Hague v. CIO and, 1070-71, 1073-74, 1076, 1077 Special Committee on the Bill of Rights, 1070-71, 1073-74, 1077, 1131, 1132, 1138, 1143 Sutherland and, 25, 627 Taft in, 889 American Civil Liberties Union (ACLU) generally, 323, 659, 688 flag salute and, 1126, 1131 freedom of press and, 693, 700 freedom of speech and, 703-4 labor picketing and, 1031, 1065, 1082 religious freedom and, 1118 American Farm Bureau Federation, 214, 352 American Federation of Labor (AFL) African Americans and, 613 CIO, conflict with, 1006, 1014-15, 1019-22 company unions and, 1019-22 Consolidated Edison and, 390, 392, 524



INDEX

American Federation of Labor (AFL) (cont.) federal jurisdiction and, 828 criminal law and, 1036 Hoover and, 976, 980 "hot oil" and, 982 Hague and, 1065 Hutcheson and, 1036 Justice Department and, 968, 976, 979 International Brotherhood of Electrical liberals and, 1041 Workers and, 1007-0 New Deal and, 981 Jones & Laughlin and, 279 NIRA and, 975-76, 979, 980-81 Norris-LaGuardia Act and, 1032 NLRB and, 987, 1009, 1010 Sherman Antitrust Act and, 1029 NRA and, 979, 982-83 American Friends Service Committee, 733 price-fixing, 982-84 American Historical Review, 1162 Progressives and, 1041 American Law Institute, 873-74, 897, 911 restraint of trade, 976-77, 1033-35 American Legal Realism. See Legal Realism rule of reason in, 977-78, 980 American Legion, 727 sit-down strikes not deemed restraint of American Liberty League trade, 1033-35 Court-packing plan and, 259 standing and, 780-81 Democratic Party and, 167 Theodore Roosevelt and, 833 FDR and, 254, 299, 311 trade associations and, 976-79 Frankfurter and, 168-69 treble damages in, 780-81 Guffey Bituminous Coal Conservation Act Apex Hosiery, 1030-31 and, 224 Apex Hosiery case Lawyers Committee, 281 appeal in, 1031-32 New Deal and, 167-70 briefs in Supreme Court, 1032-33 NLRA and, 168, 169, 389, 1043 CIO and, 1031, 1032-33 NLRB and, 168, 169, 277 Commerce Clause and, 1031-32, 1033, 1035 Republican Party and, 167 company strategy in, 1032 Schechter case and, 302 dissenting opinion in, 1033, 1035 American Newspaper Guild, 723 factual background, 1030-31 majority opinion in, 1033-35 American Newspaper Publishers Association, 690, 694, 722-23, 1119 recharacterization in, 1034-35 American Political Science Review, 46 sit-down strikes not deemed restraint of American Radio Telegraphers Association, trade, 1033-35 989-90 trial in, 1031 American Society of Composers, Authors and unions, Sherman Antitrust Act and, 1033-35 Publishers (ASCAP), 81, 327-29 union strategy in, 1032-33 Appel, Monte, 543-44 American Sugar Company, 979 American Tobacco Company, 21-22, 968 Appointment process, 340. See also specific American Zionist movement, 23 justice Amherst College, 27, 1089 Apportionment formulas versus "conceptions of basic Amount in controversy. See Jurisdictional needs," 112-13 amount Amsterdam News, 670, 1094 government structure and, 112-13 Anderson, Dorothy, 835-36 Arbitrariness standard, 264-65 Anderson, John C., 622, 623-24, 625 Arbitration, independent state grounds and, Anderson, William Dozier, 638, 639-40 832-34 Anheuser-Busch, 1037 Architectural Record, 44 Antichain store movement. See Chain stores Archival work, xv Anticonfiscation doctrine, 445-49 Arizona Anti-Injunction Act, 849 labor law, injunctions and, 1080 railroad length limits in, 790-93 Anti-Semitism, 22, 701-2. See also Jews Antitrust Division, 481, 948, 968, 980, 982 Arkansas Antitrust law Child Labor Amendment (proposed) chain stores and, 966 and, 795 debtor relief laws in, 135-36 Clayton Act (See Clayton Act of 1914) gasoline tax in, 375-76, 377 "cooperative competition" and, 976, 978-79, 980, 983 interstate commerce and, 102 factual complexity of, 975 Mitchell case (See Mitchell case) FDR and, 975-76, 978, 981 racial violence in, 614



INDEX

seizure of land for nonpayment of taxes in, "Bank holiday," 146, 943-44 Bankruptcy Clause, 294-95 403-5 Armour Meat Company, 520 Bankruptcy law Arms Control and Disarmament Agency, 760 Contracts Clause and, 122 Arnold, Thurman, 244, 968, 980, 981-82, farms and, 186 983-84, 1036-38, 1041, 1085 Frazier-Lemke Act, 186-90, 248, 251, 293-94 Asbury, Herbert, 607 municipal bankruptcies and, 245-47 Ashwander, George, 757-58 Radford case and, 188-89 Ashwander case Vinton case and, 293-94 generally, 768 Bargaining units appeal from certification decisions, 1015 appeal in, 946-47 briefs in Supreme Court, 947-50 company unions and, 1017-18 company strategy in, 947-48 injunctions and, 1015-16 NLRA and, 1015, 1018 competition and, 951, 952-53 Congressional authority to create TVA, NLRB authority regarding, 1014-18 947-48, 949, 950 refusal to bargain as avenue for review of as derivative action, 757-62, 945-46 certification decisions, 1016-18 unfair labor practices and, 1015 dissenting opinion in, 951 excess power, sale of, 944, 945-46, 949-51 Barnett, Mose, 691 General Welfare Clause and, 947, 948 Barnouw, Erik, 87 government strategy in, 948-50 Barnwell Brothers, 408-9 Barrett, William, 353 majority opinion in, 950-51 national defense and, 949, 950 Bartels, William, 597-98 Baruch, Bernard, 170-71 national power, scope of, 948-49 Bates, Henry, 423 standing in, 757-62, 771-73, 944 Tenth Amendment and, 947 Bates, Ruby, 615, 616, 621, 623, 629 Baude, William, 317 trial in, 946 Associated Negro Press, 676 Beale, Joseph H., Jr., 680, 896-98, 907, 909, Associated Press, 278, 280, 723-25 911, 912 Atkins, J. Alston, 650, 651, 654 Beard, Charles, 220, 955 Atlanta Constitution, 736 Beardsley, John, 688, 740–42, 743 Beck, James M., 301, 476, 477, 527, 540, Atlanta Daily World, 1094 Atlantic & Pacific Tea Company, 97-98 552-54, 947-49, 950-51 Beddow, Roderick, 620-21 Attorneys generally, xiv Begin, Menachem, 1085-86 Belcher, William, 174-75 effective assistance of counsel, 626, 634-35, Bellamy, Francis, 1126 professionalism and, 607-9 Belmont, August, 506, 507 Benson, Charles, 452 prosecutors, professionalism and, 608 right to counsel (See Right to counsel) Benson Sheet Iron and Metal Works, 452 Auerbach, Jerold S., 609 Bentham, Jeremy, xiv, 1056 Australia, federalism in, 400 Bentley, Arthur, 45-46, 48, 416, 1045, 1113 Automobiles Berge, Wendell, 661 Dormant Commerce Clause, automobile Berger, Harry, 607-8 Berkson, Pincus M., 391 caravans and, 824 insurance, common law and, 875 Berle, Adolf A., 250 searches and seizures of, 595, 601-2 Bernays, Edward, 911-12 Avery, Caroline, 634 Bernays, Hella, 911-12 Avery, Lonnie, 634-35 Bernays, Murray C., 911-12, 913 Bethlehem Shipbuilding Company, 845-46 Back pay, authority of NLRB to award, 1001-5 Bethlehem Steel, 193 Baker, Newton, 319, 769 Bettman, Alfred, 566 Biddle, Francis, 659-60, 661, 673, 674, Baker, Paula, 660 Baker, Ray Stannard, 612 774-75, 1082 Bakery & Confectionery Workers, 1019-20 Biddle, George W., 728-29 Baldwin, Mathias, 692-93, 694 Biggs, J. Crawford, 318, 935, 936, 1129 Baltimore Afro-American, 621, 1093 Biggs, John, Jr., 1031-32, 1035, 1071-72 Bank accounts, taxation of, 361-62, 793 Bill of Rights Day, 1141



INDEX

Bills of attainder, 831, 947 jurisdictional amount and, 824-25 in Ku Klux Klan, 314, 316–17, 340, 644, Bimco Trading, 849 Birth citizenship, 450 645-46 Bituminous Coal Act of 1937, 356-57 "labor dispute" construed, 1104-5 labor law and, 393, 395, 396 Bixby, David, 660 Black, Charles L., 818 labor picketing and, 1106, 1109-10, 1111 Black, Hugo licensing fees and, 327-29 life of, 314 generally, 1041, 1043, 1129 abstention and, 387 in Meadowmoor case, 1106, 1109-10, 1113 on administrative state, 1026 milk price regulation and, 347 modification of opinions by, 932 in Apex Hosiery case, 1034 as associate justice, 323-24 in Morgan cases, 537 back pay and, 1004, 1005 Native Americans, taxation of, 884-85 in Carolene Products case, 412-13 new approach of, 324-30, 332 challenges to appointment, 317 New Deal and, 316-17 in Chambers v. Florida, 644-46 in New Negro Alliance case, 1093, 1094 choice of law and, 908 NLRA and, 1020 in Classic case, 663, 666 nomination as associate justice, 2, 261, 311, coerced confessions and, 644-47 314, 340 in Coleman v. Miller, 797, 798, 801 nondelegation doctrine and, 358 company unions and, 1012 opinion writing and, xiv preemption and, 379-80 confirmation as associate justice, 315-16, 1158 Prohibition and, 602 conservative views of, 316 property rights and, 1113-14 contempt and, 931 public utility rates and, 325 corporations, and applicability of Fourteenth railroad length limits and, 791-92 rate-making and, 384-85, 387, 448 Amendment to, 326-27, 368 deference and, 384-85 Roberts and, 324, 333 Democratic Party and, 315 school segregation and, 669-70 dissenting opinions and, 334-35 (See also scope of review in post-Erie cases, 879-80 specific case) in Senate, 314-15, 316-17 Dormant Commerce Clause and, 375 sit-down strikes and, 1000 Douglas and, 333 sovereign immunity and, 795 Due Process Clause and, 814 standing and, 769, 774, 775-77, 778, 780-81 effective assistance of counsel and, 635 statutory interpretation by, 917-18, in Erie Railroad Co. case, 867, 868, 874 924-25, 927 Fair Labor Standards Act and, 315, 352-53 Stone and, 323, 325, 326-27 in Fansteel case, 1000 "substantial evidence" standard and, 1022, on federalism, 882, 884-85 1025-26, 1027 federal jurisdiction and, 812 Tenth Amendment and, 356 Federal Rules of Civil Procedure and, 894 title to property and, 404-5 Black & White Taxicab & Transfer Company, fire insurance companies, taxation of, First Amendment, and reasonableness "Black Monday," 5, 251, 253, 1155. See also standard, 327 Radford case; Schechter case food labeling laws and, 329-30 Blackstone, William, 573, 576 Blair, John, Jr., 785 Frankfurter and, 324 gasoline tax and, 376-77 Blaisdell, John, 123 in Gobitis case, 1135 Blaisdell, Rosella, 123 gross income tax and, 374-75 Blaisdell case in Hague v. CIO, 1075 attitudes of FDR Administration toward, 250 briefs in Supreme Court, 125-26 Hughes and, 315 immigration law and, 379-80 changed social conditions and, 128 independent state grounds and, 837-38, class legislation in, 267-68 839, 840 concurring opinion in, 127-29 constitutional doctrine and, 135 intergovernmental tax immunity and, 399 interstate transportation and, 355-56 constitutional interpretation in, 131, 134 on judicial restraint, 777 Contracts Clause and, 124-25, 130, 132-33



INDEX

direct versus incidental effects on contracts, 126 Due Process Clause and, 124-25 economic situation, emphasis on, 127 emergency powers and, 124, 125, 126, 129-30, 133 erosion of contract rights in, 132 factual background, 123 flexibility in, 267 formulas in, 263 formulas versus "conceptions of basic needs" in, 129 Fourteenth Amendment and, 127 frustration versus impairment, 133, 134 lower court proceedings, 123-24 majority opinion in, 126-27, 128-31 New Deal, impact on, 162-63, 165 NIRA and, 163 police power and, 124, 125 Progressivism and, 128, 130-31 reaction to, 162-63, 165 rent control compared, 125-26 revisiting of, 403-5 rights versus remedies, 126-27, 130 state supreme court proceedings, 124-25 temporary nature of measures in, 131 Van Devanter, role of, 131 virtues of statute versus constitutionality, 134 Bland, Marie, 730-31, 734 Boas, Franz, 613 Boggs, T. Hale, 659, 660, 662 Bolivia, embargoes and, 494-96 Bond, M.C., 138 Bonus Army, 1060 Borah, Wayne G., 719 Borah, William, 14-15 Borchard, Edwin, 501-2, 750-51, 752, 753-54, 755, 756–57, 762 Borden, Lizzie, 1047 Borden (milk company), 410 Borrowing, 944 Boskey, Bennett, 801 Boston-Continental Bank, 883 Boston Globe, 345 Boston University, 643, 1124-25 Boudin, Leonard, 993, 1007 Boudin, Louis, 40, 391, 393, 1006, 1007, 1009, 1021, 1031, 1033 "Boundary pricking," 305, 1149 Bowen, Alfred, 125, 126, 137 Bowen, Ivan, 1011-12 **Boycotts** federal jurisdiction and, 828 secondary boycotts, 1028-29 Boylan, Michael, 690-91 Braden, George, 310, 380, 415-16, 469, 1142, 1143, 1144, 1145

Bradford Electric Company, 901-2 Bradley, Joseph, 65, 786, 788, 1054 Brandeis, Louis Dembitz generally, 30, 38, 701, 748, 760, 811, 1113 abstention and, 758-59 additur and, 266 administrative law and, 464, 466-67, 518 "affected with a public interest" test and, 67, 69, 70, 71-73 in Alton Railroad case, 243 antitrust law and, 968, 975 on "bigness," 967, 969-70 in Blaisdell case, 128-29, 132 books by, 23 on bureaucratic appointments, 114-15 in Butler case, 214, 219 Carolene Products Footnote 4 and, 414 in Carter Coal Co. case, 227 chain stores and, 956, 961, 963 choice of law and, 899, 900-1, 903-5, 910 on "conceptions of basic needs," 69 congratulatory letters and, 333 on consensus, 334 Court-packing plan and, 257, 261-62 in Crowell v. Benson, 459-61 Declaratory Judgment Act and, 751-53 Democratic Party and, 24 deportation and, 450-51 derivative actions, constitutional questions and, 758-60, 761-62 diversity jurisdiction and, 862, 872 on doctrinal innovation, 109-10 Due Process Clause and, 1049 entrapment and, 589, 591 in Erie Railroad Co. case, 866, 867-73 estate tax and, 60 federal jurisdiction and, 828 flexibility and, 267 formalism and, 115 Frazier-Lemke Act and, 294-95 freedom of speech and, 681, 684-85, 688–89, 746, 1044, 1046, 1097 general federal common law and, 862, 872 in Gold Clause cases, 147-48, 151-52, 155 in Herndon case, 712 Hughes and, 31, 745 ICC and, 90, 93 independent state grounds and, 838, 841 intellectual property and, 877-78 in Jones v. SEC, 530 jurisprudence of, 24 labor law and, 1080 labor picketing and, 1083-84, 1095 law clerks and, 338 legal education of, 56 Legal Realism and, 24, 525 life of, 22-23 in Macintosh case, 734



INDEX

Brandeis, Louis Dembitz (cont.) solicitor general and, 934-37 style of, 934-37 McReynolds and, 22 Brinkley, Alan, 417, 1163, 1164 minimum wage and, 231, 232 municipal bankruptcies and, 247 Bristow, George, 807 national excise taxes and, 201 Brodsky, Joseph, 620, 622, 628 naturalization and, 730, 734 Brooklyn Law School, 608 in Near v. Minnesota, 696-98, 701-2 Brooks, Raymond, 836 on NIRA, 440 Brotherhood of Pullman Car Porters, 816 in Panama Refining case, 181 Brotherhood of Railway Clerks, 85 politics of, 2, 23-24 Brotherhood of Utility Employees, 390-91 prior restraint and, 696-98, 701-2 Broun, Heywood, 715 on privacy, 23 Browder, Earl, 618 as public intertest lawyer, 23 Brown, Armstead, 643 Brown, Ed, 636-37, 638, 641 in Radford case, 189-90 rate-making and, 446 Brown, Harry F., 579, 580 Brown, Hugh, 582, 584 removal of executive officials and, 480, 487 Republican Party and, 23-24 Brown, Ray A., 470-71, 548 retirement of, 321, 419, 1072 Brown & Yellow Taxicab & Transfer in St. Joseph Stock Yards case, 521, 523-24 Company, 859-60 in Schechter case, 198, 199 Brown v. Mississippi scope of review and, 525 briefs in Supreme Court, 639-40 sovereign immunity and, 793 coerced confessions and, 636-37, 638, in Soviet nationalization cases, 508 639-41 specialized federal common law and, 885-86 defense strategy in, 639 spousal testimony and, 265-66 Due Process Clause and, 639-40 standing and, 762, 765-66, 777-78 factual background, 636 on stare decisis, 109-10 government strategy in, 639-40 state income tax exemptions and, 203 lower court proceedings, 636-37 statutory interpretation by, 79, 81-82 majority opinion in, 640-41 stays issued by, 1047 NAACP and, 638, 639 Stone and, 27–28 reaction to, 640-41 strikes, interstate commerce and, 1030 retrial in, 641 on substance versus procedure, 887 state court appeals, 637-39 "switch in time" and, 303 Brown Wood Preserving Company, 1096 Taft and, 24 Brownlee, W. Elliott, 58 Theodore Roosevelt and, 23-24 Brownlow, Louis, 488 in Tipaldo case, 234, 235, 236 Brownlow Committee, 488-90 treaties, enforcement of Prohibition and, 588 Bruno, Jerry, 926 trucking industry, regulation of, 739 Bryan, Nathan, 946-47 unconstitutional conditions and, 739 Bryan, William Jennings, 21 unemployment insurance and, 209 Bryant, Randolph, 179 Van Devanter and, 20, 21 Bryce, James (Lord), 652, 653, 654, 1069 vested rights and, 77 Buffalo, University of, 1113 voter fraud and, 660 Buffington, Joseph, 1031, 1071 in "White Primary" cases, 652, 656 Building Trades Council, 1065 Wilson and, 22, 23-24 Bullitt, William Marshall, 188 wiretapping and, 578-79 Burbank, Stephen, 895 "Brandeis briefs," 23 Burden of proof, substance versus procedure, Brant, Irving, 18, 252, 258, 295, 760 887-88 Bureau of Animal Industry, 536 Brennan, Thomas, xiv-xv Brewer, David, 14, 23, 42-43, 639-40, 641, Bureau of Insular Affairs, 318 Bureaucratic appointments 858-59 Brandeis on, 114-15 Brewer, Earl, 638 formulas versus "conceptions of basic Bricklayers Union, 1036 needs," 113-15 Bridges, Harry, 1014, 1065, 1068 Briefs. See also specific case government structure and, 113-15 evolution of, 934-37 Legal Realism and, 115 Legal Realism and, 934-35, 937 Burke, Frank, 1051

I I 72



INDEX

Burke, James, 806 Burlingham, Charles C., 260, 423 Burnquist, Joseph, 841 Burns, John, 527-28 Butchers' Union, 1084-85 Butler, Pierce generally, 14 "affected with a public interest" test and, 69 in Blaisdell case, 126 business regulation and, 89-90 in Carolene Products case, 412 chain stores and, 959, 964-65 in Coleman v. Miller, 798-99, 801 compulsory military training and, 742-43 confirmation as associate justice, 26 on consensus, 334 in Crowell v. Benson, 455 Democratic Party and, 25 derivative actions, constitutional questions and, 758 dissenting opinions and, 334-35 (See also specific case) diversity jurisdiction and, 860 Due Process Clause and, 1049 entrapment and, 589 in Erie Railroad Co. case, 867, 868, 870, 871 estate tax and, 364, 366 federal jurisdiction and, 812 federal unemployment tax and, 291, 292 fire insurance companies, taxation of, 366-67 formulas and, 32 in Gold Clause cases, 147–48, 149, 154, 407 "grandfather clauses" and, 658 gross income tax and, 374 in Hague v. CIO, 1076 in Hamilton case, 742-43 Hughes and, 26 inter-chambers materials and, xiv intergovernmental tax immunity and, 263, 398-99, 400, 402-3 in Jones v. SEC, 527-28 Ku Klux Klan and, 26 labor law and, 393, 394, 395 labor picketing and, 1083-84, 1087-88 law clerks and, 338 legal education of, 56 liberal views of, 26 life of, 25 naturalization and, 729-30 in Near v. Minnesota, 696, 698-700 in Nebbia case, 142 in New Negro Alliance case, 1093-94 NLRA and, 525 nondelegation doctrine and, 358-59 opposition to, 26 organized crime and, 607 in Palko v. Connecticut, 1055

in Powell v. Alabama, 627, 1148 prior restraint and, 696, 698-700 in private practice, 841 Prohibition and, 598-99 rate-making and, 446-47, 448 red flag display and, 688, 689 Republican Party and, 26 sales and use taxes and, 372 Social Security Act and, 292 sovereign immunity and, 788, 792-93 standing and, 766, 769, 773 on stare decisis, 37 state income tax exemptions and, 363-64 statutory interpretation by, 920-21 Taft and, 25 in Tipaldo case, 234, 235, 236, 298 tobacco industry regulation and, 351 treaties, enforcement of Prohibition and, trucking industry, regulation of, 100 TVA and, 952, 953 Van Devanter and, 25 in "White Primary" cases, 652 Butler, William, 210 Butler case briefs in Supreme Court, 210-14 coercion and, 214-15, 217-18, 219 Commerce Clause and, 210, 218 company strategy in, 210-13 dissenting opinion in, 219-20 factual background, 210 federal unemployment tax compared, 290 First Amendment and, 217 General Welfare Clause and, 212-14, 215, 216, 218 government strategy in, 213-14 internal versus external powers, 211, 212-13 lower court proceedings, 210 majority opinion in, 215-18 oral arguments in Supreme Court, 214-15 purpose of statute and, 211-12, 213 taxpayer standing and, 211, 215-16 Tenth Amendment and, 210, 216-17, 218 Byers, Mortimer, 496, 498, 500 Byrne, William M., 688 Caillouet, A.J., 660-61 Caldwell, Louis G., 185-86, 436, 540, 701, 779 Calhoun, William J., 597 California Caravan Tax Act, 824 compulsory military training in, 740-44 Constitution (1879), 76-77 criminal syndicalism law in, 682-83, 684 Hamilton case (See Hamilton case) Industrial Accident Commission, 905-6

1173

insurance companies, taxation of, 326

Railroad Commission, 448



INDEX

California (cont.) formulas and, 35-36, 37 red flag display in, 687 formulas versus balancing, 264 freedom of press and, 719-20, 725 removal of actions in, 854 trucking industry, regulation of, 738-40 in Gold Clause cases, 147-48 use tax in, 371-72 in Hamilton case, 742-45 vested rights in, 76-77 in Herndon case, 712 workers' compensation in, 905-8 Hoover and, 30 California, University of, 740 Hughes and, 16 Callahan, William, 629, 630 ICC and, 93, 94-95 Canada, federalism in, 400 independent state grounds and, 841 Canning and Pickle Workers, 1012-13 intergovernmental tax immunity and, 108 Cantwell, Jesse, and family, 1119-20 in Jones v. SEC, 530, 531-32 Cantwell v. Connecticut on judicial salaries, 159 breach of peace and, 1121, 1122-23 Legal Realism and, 56 briefs in Supreme Court, 1120-21 legal theory and, 33-36, 55 factual background, 1119-20 life of, 31 government strategy in, 1121 on "mass of particulars," 34 Jehovah's Witnesses strategy in, 1120-21 McReynolds and, 22 in Morgan cases, 536 majority opinion in, 1122-23 oral arguments in Supreme Court, 1121-22 municipal bankruptcies and, 246-47 permit requirement in, 1120, 1122 national excise taxes and, 201-2 in Nebbia case, 268-69, 1161 reaction to, 1123 New Deal and, 249 solicitation and, 1120, 1122 nomination as associate justice, 29-30 trial in, 1120 in Palko v. Connecticut, 1055-57 unfettered discretion of municipality and, I I 20-2 I in Panama Refining case, 183-85 Capone, Al, 82-83, 1102 politics of, 30 Capra, Frank, 1143 price regulation and, 344-45 Cardozo, Benjamin N Prohibition and, 596-97, 600 generally, 38, 411, 624 racial discrimination and, 1092 additur and, 266 reasonableness standard and, 265 administrative law and, 514 in St. Joseph Stock Yards case, 522, 523 in Schechter case, 198-99 on administrative state, 184 in Alton Railroad case, 243 Social Security Act and, 292-93 arbitrariness standard and, 264-65 on sociology, 34, 36 "arising under federal law" and, 828-30 in Soviet nationalization cases, 508 on "bigness," 969-70 on stare decisis, 110 in Blaisdell case, 127-29, 130-31, 267, 268 state income tax exemptions and, 203 systematic legal theory and, 1152 books by, 33-34, 35, 37, 56, 109-10 brief writing and, 936 in Tipaldo case, 234, 235, 236 in Butler case, 219 Van Devanter and, 30 in "White Primary" cases, 652, 653-54, in Carter Coal Co. case, 227, 230-31, 357 chain stores and, 961-62, 963-64, 965, 984 655, 656 civil liberties and civil rights and, 1115 wiretapping and, 583 on class legislation, 269 writing style of, 36, 828-29, 936, 963, compulsory military training and, 742-45 1152 "conservative" decisions by, 1148 Carey, Robert, 1077 on criminal law, 566 Carnegie, Andrew, 58 death of, 318, 319 Carolene Products Company, 410, 411, 412 Democratic Party and, 30-31 Carolene Products Footnote 4 derivative actions, constitutional questions generally, 415, 418, 1057, 1145 and, 758 civil liberties and civil rights and, 413-16, diversity jurisdiction and, 858 1114, 1115 on doctrinal innovation, 110 constitutional facts and, 469 criminal law and, 645 Due Process Clause and, 1046, 1048-49, economic regulation versus civil liberties 1050-51 federal jurisdiction and, 827, 828-30 and civil rights, 1057-58 federal unemployment tax and, 289-91 freedom of speech and, 1061, 1064, 1074

I I 74



INDEX

fundamental rights and, 1143 (See also Ceaser, James W., 558 Fundamental rights) Censorship Gobitis case and, 1132, 1134, 1139 Near v. Minnesota and, 698, 699 in Hughes Court generally, 1057 prior restraint and, 698, 699 interest group pluralism and, 414, 984, 1058, Certiorari, 339, 831-32, 843 Chafee, Zechariah, 319, 424, 562-64, 611, 685, 1065, 1069, 1070, 1075, 1078, 1125-26, labor picketing and, 1057, 1097, 1109, 1111 Progressivism and, 414 1128, 1140 property rights and, 1058 Chain stores public policy and, 1058, 1059 antitrust law and, 966 rational argument' and, 413–14, 1045, 1059 "Babbitry" and, 956 rational basis standard and, 412 business model of, 953-54 Carpenter, Charles, 310 class legislation and, 956 department stores, 962-63 Carpenter, Robert, 167 Carpenters Union, 1036-37 Equal Protection Clause and, 958-59, Carr, Joseph, 706, 712 965, 966 Carroll, Lewis, 55 formulas and, 965 Carter, Dan, 628 gas stations, 963-64, 965 Carter, Edward L., 1156 graduated gross receipts taxes and, 960-63 Carter, James (Carter Coal Company), 224-25 graduated license taxes and, 957-60, 964-65 Carter, James Coolidge (legal theorist), 38 grocery stores, 957-60 Carter, Jesse C., 36 pharmacies, 960-62 Carter, William, 224-25 Progressives on, 955-56, 961, 965 Carter Coal Co., 224-25, 227 social costs of, 954, 961 Carter Coal Co. case volume discounts and, 966 briefs in Supreme Court, 225-26 Chamber of Commerce, 254 Commerce Clause and, 226, 228, 230, 305, Chamberlain, George, 476 Chamberlain, John, 48 1161 Chambers, Izell, 642-43, 646 company strategy in, 226-27 Chambers, John W., 1153-54 concurring opinions in, 229-31 docket books and, 1157 Chambers v. Florida Due Process Clause and, 230 briefs in Supreme Court, 643-44 factual background, 224-25 defense strategy in, 643-44 Due Process Clause and, 644 government strategy in, 225-26 liquidation versus regulation, 225-26 factual background, 642-43 lower court proceedings, 224-25 lower court proceedings, 642-43 majority opinion in, 227-29 majority opinion in, 644-46 manufacturing versus interstate NAACP and, 642, 643-44 commerce, 228 reaction to, 645-46 NLRB and, 277-78 Chamlee, George W., 620, 622 nondelegation doctrine in, 229, 230-31, 359 Chandler, Charles, 657 Chapman, J.R., 900 oral arguments in Supreme Court, 226-27 price regulation and, 226, 227, 229-30 Charles Widger School of Law, 192-93 Chase, Harrie, 582 ripeness and, 230 severability and, 227, 229-30, 231, 357 Cheney, Anne, 804 standing in, 227 Chesebro, Ray, 1062 Chicago, University of, 429, 805-12, 1034-35 states and, 225-26 "switch in time" and, 1154, 1155 Chicago Daily Tribune timeliness and, 227 on De Jonge case, 706 wages and hours and, 226, 227, 229-30, 356 on Morgan cases, 535, 538 Case or controversy requirement on NLRB, 1009 Child Labor Amendment (proposed) and, on sovereign immunity, 787, 789 799-800 Chicago Defender, 671, 812 Coleman v. Miller and, 799-800 Chicago Great Western Railroad, 767 Declaratory Judgment Act and, 751-52, 753, Chicago Tribune on Brown v. Mississippi, 641 754, 755 Cathcart, Arthur, 689 on Lovell v. City of Griffin, 1119 Catholic Church, 557 on Macintosh case, 736



INDEX

Chicago Tribune (cont.) abstention and, 814-21 prior restraint and, 689-90, 700 in administrative state, 451 on sit-down strikes, 1000 Carolene Products Footnote 4 and, 413–16, Child labor, Commerce Clause and, 795 1114, 1115 conservative view of, 529, 552-57, 1044 Child Labor Amendment (proposed) generally, 251 constitutional protection as possible theory, case or controversy requirement and, 799-800 Coleman v. Miller (See Coleman v. Miller) convergence of liberals and conservatives conservatives on, 795 regarding, 564, 746 factual background, 795 Crowell v. Benson and, 451 deference and, 1045 Fair Labor Standards Act, effect of, 802 FDR and, 795-96 Douglas and, 321-22 justiciability of, 796, 798, 801 economic regulation versus, 746, 1044, lieutenant governor, authority of, 796, 801 1057-58, 1148 lower court proceedings, 796 FDR on, 312-13, 1043 right to vote and, 800-1 freedom of press (See Freedom of press) standing and, 796-97, 799 freedom of speech (See Freedom of speech) state ratification subsequent to rejection, Free Exercise Clause (See Free Exercise 796, 797 taxpayer standing and, 800 interest group pluralism and, 1113-14 time limitation, 796, 797-99 Jehovah's Witnesses and, 1141 Child Labor Tax Act of 1919, 795 Legal Realism and, 564 Childs, Marquis, 326-27 liberals and, 745 Chinn, Stuart, 1041 national power versus, 312-13, Choice of law 1043-44 commercial insurance and, 899-901 New Deal and, 1043, 1077-78 Progressive view of, 551-52, 557-64 diversity jurisdiction and, 910 Due Process Clause and, 898, 899, 907 property rights and, 1058 Erie Railroad Co. case and, 901, 908-9 race and (See Race) formalism and, 896-97, 907 religious freedom (See Religious freedom) forum-shopping and, 909-10 substantive due process and, 413 Full Faith and Credit Clause and, 898-99, textualism as possible theory, 1115 901, 903-8, 909 withdrawal of constitutional protection as general federal common law and, 895 possible theory, 1114 Legal Realism and, 897-98 Civil Liberties Unit, 659, 1076, 1142 patents and, 910-13 Civil procedure ABA and, 888, 889-90 in post-Erie cases, 878 Rules of Decision Act and, 895 choice of law (See Choice of law) Federal Rules of Civil Procedure (See substance versus procedure, 909 Federal Rules of Civil Procedure) substantive due process and, 900 territorialism and, 899, 900, 901 historical background, 888-90 reform attempts, 888-90 in transitory causes of action, 895-96, Rules Enabling Act (See Rules Enabling Act typical patterns of cases, 896 of 1934) uniformity and, 908-9 substance versus procedure, 887-88, workers' compensation and, 902-8 890-91, 892, 893, 895, 909 Christian Science Monitor, 275 Civil Rights Section, 659-60 Chronological approach, xv Civil service "Churches' Plea against War and the War expertise in, 473 System," 726 FDR, politicization by, 473-74, 475 Churchill, Winston, 509 jury trials and, 577 Ciepley, David, 408 patronage system, 472, 473, 475 Cincinnati, University of, 56 presidential powers, 474-75 Citizenship Progressives and, 472 birth citizenship, 450 removal of executive officers (See Removal deportation of citizens, 450-51, 466-67, 468 of executive officials) City College of New York, 318 Civil War, addition of justices during, 253 Civil liberties and civil rights Civilian Conservation Corps (CCC), 208



INDEX

Claims Division, 935 Classical legal thought, 1149-53, 1158-59 Clapper, Jennie M., 901-2, 904 Classical-modern dichotomy, 1146, Clapper, Leon, 901-2, 904 1149-53 Clark, Charles E., 321, 731, 750, 753-54, Clawans, Ethel, 570-72 Clawans, Lillian, 570 847, 890 Clark, Grenville, 722, 1070, 1076, 1077-78, Clayton Act of 1914, criminal law and, 1038-40 1131, 1132 Clark, John A., 637-38, 640 Hutcheson case and, 1038-40 Clark, Tom, 582 interstate commerce, labor not deemed to be, Clark, William C., 111, 1031, 1066-67, labor picketing and, 1079 1069–70, 1071, 1072, 1073, 1075, 1129-30 secondary boycotts under, 1029 Clarke, John Hessin, 25, 660, 899, 1080 statutory interpretation, 1080 unions and, 1032 Class actions generally, 804-5 "Clear and present danger" test, 563, 681, 684, adequate representation requirement, 685, 715, 1099 Clerks, 337-39 807, 809 Federal Rules of Civil Procedure and, 809 Cleveland Crime Survey, 566, 569 Fourteenth Amendment and, 809 Cleveland Foundation, 566 fraud and collusion in, 807-8 Climenko, Jesse, 582 litigation choices, 806-7 Coal mining industry as res judicata, 807-8, 811 Carter Coal Co. case (See Carter Coal Co. restrictive covenants and, 805-12 case) stipulations in, 806-7 Code, 223-25 economics of, 223 Class legislation African Americans and, 555 interstate commerce, coal mining not Agricultural Adjustment Act as, 218 deemed to be, 1029-30 in Blaisdell case, 267-68 voluntary price regulation associations chain stores and, 956 in, 356 conservatives and, 7, 554-55 Coast Guard, 587-88 dentists, price advertising by, 267, 268 Cochran, Ernest, 79 doctrinal setting and, 269 Coerced confessions generally, 636 in Gold Clause cases, 267 Brown v. Mississippi (See Brown v. growing acceptance of, 7 Mississippi) interest group pluralism and, 268-69 license fees and, 821-22 Chambers v. Florida (See Chambers v. in Nebbia case, 268-69 Florida) public interest versus private interest, Due Process Clause and, 639-40, 644 "third degree" and, 611-12 40-41, 43 Classic case White v. Texas, 646-47 briefs in Supreme Court, 661 Coercion, conservatives on, 554 Coffin, Sloan, 736 Congressional authority regarding elections and, 661-63, 664, 665 Cohen, Andrew W., 1102 Cohen, Benjamin, 317-18, 973-74 constitutional interpretation in, 664-65 constitutional right to vote in primary Colby, Bainbridge, 527 elections, 661-63, 664, 665 Coleman v. Miller defense strategy in, 662-63 case or controversy requirement and, dissenting opinion in, 665-66 799-800 factual background, 659 factual background, 795 Fifteenth Amendment and, 666 justiciability and, 796, 798, 801 Fourteenth Amendment and, 661, 662, lieutenant governor, authority of, 796, 801 663-64, 666 lower court proceedings, 796 right to vote and, 800-1 government strategy in, 661-62 lower court proceedings, 660-61 standing in, 796-97, 799 majority opinion in, 663-66 state ratification subsequent to rejection and, NAACP and, 666 796, 797 time limitation and, 796, 797-99 "White Primary" cases compared, 663, Colgate, James, 202



INDEX

Collective bargaining	Commercial Credit Company, 603
FDR on, 172	Commissioners on Uniform State Laws,
NIRA, under, 172	873-74
NLRA, under, 987, 1024	Committee on Administrative Management,
refusal to bargain as avenue for review of	488–90
bargaining unit certification decisions,	Committee on Administrative Procedure,
1016–18	544, 545
"substantial evidence" standard and,	Committee on Economic Security, 209
1023–25	Committee on Militarism in Education,
Colleges and universities. See also specific	727–28, 744
institution	Common law
compulsory military training in (See	constitutional rights versus, 1104
Compulsory military training)	Due Process Clause and, 1080
land-grant universities, 742	general federal common law (See General
Reserve Officers Training Corps (ROTC),	federal common law)
726–28, 740–41, 742	labor picketing at, 1078–79, 1103, 1104
Collusion in class actions, 807–8	pre- <i>Erie</i> decisions involving, 875–76
Colorado	specialized federal common law, 885–86
estate tax in, 366	Commons, John R., 972
removal of actions, statutory interpretation	Commonwealth and Southern Company, 760
and, 920–21	Commonwealth Fund, 423–24
unincorporated associations, standing	Communist Party
and, 766	generally, 4, 391
water rights in, 885	African Americans and, 707, 709, 714
Columbia Law Review, 1063-64	criminal syndicalism and, 702–3, 704–5
Columbia Law School, 26–27, 40, 55–56, 74,	De Jonge case and, 703
219–20, 317, 320–21, 423, 655, 710,	freedom of speech and, 679, 682–83, 702,
886, 935	1065–66
Columbia University, 56, 483, 490, 613	Herndon case and, 707, 709, 712–13, 714
Columbia University Quarterly, 735	Langston Hughes and, 677
Commentaries on the Conflict of Laws, Foreign	on liberalism, 713
and Domestic (Story), 895	meetings of, 1065–66
Commentaries on the Constitution (Story), 206	Powell v. Alabama and, 621, 628
Commerce Clause. See also Interstate commerce	Scottsboro cases and, 615, 619, 620,
	621, 633
Agricultural Adjustment Act and, 210	unions and, 1014
Alton Railroad case and, 238, 242	Company unions generally, 1006
Apex Hosiery case and, 1031–32, 1033, 1035 Butler case and, 210, 218	AFL and, 1019–22
Carter Coal Co. case and, 226, 228, 230,	bargaining units and, 1017–18
305, 1161	cease and desist orders, 1010
child labor and, 795	CIO and, 1019–22
"Constitutional Revolution of 1937" and,	contracts, authority of NLRB to overturn,
1160	391, 393, 1007–8
domicile for purposes of taxation and, 102–5	in <i>Fansteel</i> case, 994, 998
Dormant Commerce Clause (See Dormant	NLRA and, 1009–10
Commerce Clause)	remedial authority of NLRB regarding,
freedom of press and, 724	IOI0-I4
Jones & Laughlin case and, 281–82, 284–86,	statistics, 1006–7
306, 355	as unfair labor practice, 1009–10
labor law and, 392, 393–96	Competition
Mitchell case and, 673	Ashwander case and, 951, 952–53
NLRA and, 278, 355, 395, 1161	"cooperative competition," 976, 978–79,
Railway Labor Act and, 271, 285	980, 983
Schechter case and, 193, 194–95, 197–99,	Great Depression, ruinous competition as
304, 305	cause of, 275–76
state regulation of local activities and,	Holmes on, 764
101, 102	Legal Realism and, 764



INDEX

loss of competitive advantage, standing and, opposition to Court-packing plan, 257, 259-60 764-73 NIRA and, 763-64 presidential versus Congressional power, TVA and, 951, 952-53 499-500 unfair competition (See Unfair competition) removal of executive officials and, Compulsory military training 477-78, 479 Senate Judiciary Committee, 257, 259-60, balancing and, 742 Due Process Clause and, 741-42, 743 295, 1079 Hamilton case (See Hamilton case) support for Court-packing plan, 256 liberty and, 741-42, 743 TVA, authority to create, 947-48, 949, 950 Congress of Industrial Organizations (CIO) police power and, 728 Privileges and Immunities Clause and, AFL, conflict with, 1006, 1014–15, 1019–22 740-41, 743 African Americans and, 613 unconstitutional conditions and, 743 Apex Hosiery case and, 1031, 1032-33 Conboy, Martin, 496, 497 company unions and, 1019-22 'Conceptions of basic needs" Consolidated Edison and, 392 Democratic Party and, 1078 "affected with a public interest" test and, FDR and, 1000, 1004-5 apportionment and, 112-13 freedom of speech and, 1065, 1066 in Blaisdell case, 129 Hague v. CIO (See Hague v. CIO) Brandeis on, 69 Hutcheson and, 1036 bureaucratic appointments and, 113-15 Jones & Laughlin and, 279, 287 Eighteenth Amendment and, III-I2 NLRB and, 987, 1007, 1010, 1027 organizing by, 1065, 1066 estate tax and, 57-63 Federal Radio Commission and, 87-90 sit-down strikes and, 993-94 formulas versus, 32-33, 37, 57, 73-74, Conkin, Paul, 942-43 117–18 (See also specific topic) Conn, William, 639-40 in Gold Clause cases, 157 Connally Hot Oil Act, 921-22, 927 Hughes on, 1152 Connecticut ICC and, 90-95 Cantwell v. Connecticut (See Cantwell v. intergovernmental tax immunity and, Connecticut) Palko v. Connecticut (See Palko v. 105-8 interstate commerce and, 101-5 Connecticut) Conner, C.B., 272 martial law and, 115-17 price regulation and, 63-65 Conner, Martin Sennet, 787 Prohibition and, 111-12 Conscientious objectors structure of government and, III-I7 Free Exercise Clause and, 729 Concurring opinions, 335. See also specific naturalization and, 730-37 (See also Macintosh case) case Conference, 335, 339 Consensus, 333-36 Conflict of laws. See Choice of law Conservatism administrative law and, 464-65, 512 Conformity Act of 1872, 888 on administrative state, 464-65 Confrontation of witnesses, 1050 Congratulatory letters, 333 American Liberty League (See American Liberty League) Congress accommodation of Supreme Court as Black, conservative views of, 316 potential Administration strategy, 251 Child Labor Amendment (proposed) administrative law and, 426-27, 429-30, and, 795 civil liberties and civil rights, conservative 432-33, 439-40, 469, 470 Democratic Party in, 256 view of, 529, 552-57, 1044 Dormant Commerce Clause, Congressional class legislation and, 7, 554-55 silence and, 370 coercion and, 554 conservative-liberal dichotomy, 2-3, 1146, elections, authority regarding, 661-63, 664, 665 1147-48, 1163-64 convergence with liberals regarding civil Erie Railroad Co. case, Congressional authority and, 867-68, 869, 871-72, 873 liberties and civil rights, 564 Court-packing plan and, 256 House Committee on Labor, 1022 naturalization, plenary power regarding, 728 craft unions and, 172



INDEX

Conservatism (cont.) public-private distinction and, 1159-61 Declaratory Judgment Act and, 756 as shifts in consciousness, 1158, 1161-62 "switch in time" and (See "Switch in time") in Democratic Party, 473-74 economic regulation versus civil liberties timing issues, 1158 and civil rights, 746, 1044 Contempt, statutory interpretation and, 929-31 federalism and, 699-700 Continuing jeopardy, 1052-53 freedom of press and, 722 individualism and, 553-54 freedom of (See Freedom of contract) judicial review and, 552 impairment of (See Contracts Clause) liberalism compared, 564 Contracts Clause liberty and, 553-54 bankruptcy law and, 122 police power and, 554-56, 695, 696 Blaisdell case and, 124-25, 130, 132-33 populism and, 716 debtor relief laws and, 122, 135-36 Prohibition and, 597 Eleventh Amendment and, 834 rate-making and, 447 independent state grounds and, 835-39 Reconstruction and, 555 judicial sales and, 122 Roberts as conservative, 29 Minnesota Mortgage Moratorium Act Robinson and, 254-55 and, 122 Sherman Antitrust Act and, 1028-29 municipal bankruptcies and, 245-46, 247 standing and, 762 police power and, 122-23 Stone as conservative, 27 price regulation and, 64 TVA and, 951 private contracts and, 834 Consolidated Edison, 390-94, 524, 1007-9, public contracts and, 834-35 rent control and, 123 1021, 1095 Constantine, "Dr. Gus," 201 sovereign immunity and, 784, 785, 795, 834 Constitutional Amendments. See also specific title to property and, 404, 405 vested rights and, 75, 77 Cook, Walter Wheeler, 897–98, 903, 909 Child Labor Amendment (proposed) (See Cooley, Thomas, 36 Child Labor Amendment (proposed); Coleman v. Miller) Coolidge, Calvin as potential Administration strategy, 251 generally, 26, 113-14, 483-84 Constitutional facts, 443-44, 465, 469 Hughes and, 14 Constitutional interpretation Humphrey and, 481 in Blaisdell case, 131, 134 judges appointed by, 454, 520, 521, 581, 582, in Classic case, 664-65 719, 1037, 1066 Frankfurter and, 1115 Parker and, 28 Hughes and, 218, 1138 Stone and, 27 Sutherland and, 490-91 trade associations and, 976 "Constitutional Revolution of 1937" Coombes, Pierce, 76-77 generally, 1142 Cooper, Robert M., 435, 517, 518, 524, 525 "affected with a public interest" test and, "Cooperative competition," 976, 978–79, 980, 983 1160 Commerce Clause and, 1160 Copyright Act of 1909, 916 as "constitutional settlement," 1144 Copyright law Due Process Clause and, 1160 federal jurisdiction and, 825-26 exaggeration of, 1-2, 4, 1145 licensing fees and, 328 externalist-internalist dichotomy and, 2, 4, statutory interpretation and, 81-82, 916-17 1159-60, 1162-63 Corcoran, Thomas, 199, 311-12, 317-18, 325, flexible versus doctrinal reasoning, 1160-61 973, 1043 Cornell Law Review, 38 historiography of, 1158-63 Hughes and, 1159 Corporations interest group pluralism as institutional "revolution," 1143 administrative law, attitudes of business community toward, 513-14 Jones & Laughlin case and, 1153 constitutional rights of, 720 Legal Realism and, 1144 corporate earnings, income tax on, 368-69 national power, expansion of, 1142-43 derivative actions (See Derivative actions) New Deal and, 1-2 diversity jurisdiction as favoring, 853–55 NLRA and, 1160-61 dividends, income tax on, 368-69



INDEX

Due Process Clause and, 720 Equal Protection Clause and, 720 Fourteenth Amendment, applicability of, 326-27, 368 income tax deduction for dividends, 363-64 incorporation versus franchise, 853-54 Privileges and Immunities Clause and, 720 unconstitutional conditions and, 738 Cortner, Richard C., 636, 719 Corwin, Edward, 75-76, 102, 162, 163, 164, 296, 1140 Cotteral, John, 580 Court of Claims generally, 151 judicial salaries in, 159-60 Court-packing plan generally, xiii ABA and, 1070, 1143 accommodation of Supreme Court as alternative Administration strategy, 251 alternatives available to Administration, 253 American Liberty League and, 259 Congressional opposition to, 257, 259-60 Congressional support for, 256 conservatives on, 256 Constitutional Amendments as alternative Administration strategy, 251 Court rulings, impact of, 258 defeat of, 261 Democratic Party and, 253, 259, 260-61 development of, 254-55 erosion of support for, 256-57, 260 Gold Clause cases, impact of, 299 "good government" argument, 254–56 Herndon case and, 715 historical precedents, 252-53 Hughes and, 257, 261-62, 295 judicial retirement legislation, impact of, 258-59 liberals on, 256 limiting jurisdiction of Court as alternative Administration strategy, 252 national power and, 1142 presentation of, 255 public opinion on, 256-57 reaction of Court to, 295 revision of, 260-61 Senate Judiciary Committee and, 257, 259-60, 295 "switch in time," opposition to plan casting doubt on, 300 (See also "Switch in time") Covington, Hayden, 1117, 1120-22, 1124, 1125, 1130–31 Cox, Joseph W., 1090-91 Cox, Oliver, 669-70 Cox, Willis, 1123-24 Cox v. New Hampshire briefs in Supreme Court, 1124

factual background, 1123-24 government strategy in, 1124 Jehovah's Witnesses strategy in, 1124 license fee in, 1123-25 majority opinion in, 1123-25 parades and, 1123-24 public order and, 1124 trial in, 1123-24 Craft unions, 172 Crane, Frederick, 232-33 Crane-Gartz, Kate, 687 Cravath, Henderson & De Gersdorff (law firm), 193 Creel, George, 252 Criminal anarchy laws, 682-85 Criminal law. See also specific case administrative law and, 434 AFL and, 1036 bureaucratic approaches to, 566 Cardozo on, 566 Carolene Products Footnote 4 and, 645 Clayton Act and, 1038-40 Cleveland Crime Survey, 566, 569 coerced confessions (See Coerced confessions) confrontation of witnesses, 1050 Frankfurter on, 52-53, 566 Hoover and, 567 Hughes on, 569 indictment requirement, 1053, 1055 indictment versus information, statutory interpretation and, 919-20 insanity defense, 1047 jury trials, petty offenses, 570-72 jury views, right of defendant to be present at, 1047-51 juvenile courts, 434, 513 McReynolds on, 567 Norris-LaGuardia Act and, 1037, 1038-40 parole, statutory interpretation and, 924-25 professionalism and, 568-69 Progressive perspectives on, 565-69, 1056, Prohibition (See Prohibition) scientific approaches to, 565-66 self-incrimination privilege, 639, 1053 Sherman Antitrust Act and, 1036-41 (See also Hutcheson case) Stone on, 568-69 testimony by defendants, statutory interpretation and, 926-27 "third degree" and, 611-12 unions, criminal violations by, 1036-41 (See also Hutcheson case) Wickersham Commission (See Wickersham Commission) Criminal syndicalism laws, 682-83, 684, 702-3, 704-5



INDEX

The Crisis (NAACP magazine), 639, 677, 1089 Dam, Kenneth, 267-68 Croly, Herbert, 43-45, 48-49, 54, 55, 97, Daniel, John, 207 Daniel, Josephus, 326-27 558-59, 562, 859 Darby Lumber Company, 353, 354 Crowell v. Benson administrative state and, 455-56, 463, 470, Darr, Leslie, 587 1148 Darrow, Clarence, 620, 621 Darsey, Robert, 642 agency fact-finding, limits of, 456, 457, 458 Article III and, 457, 460, 465 Dartmouth University, 1124-25 briefs in Supreme Court, 454-55 Dauber, Michelle Landis, 207 civil liberties and civil rights and, 451 Daugherty, Harry, 27 Davis, Benjamin, 707-8, 712 company strategy in, 455 de novo review in, 459, 453-54, 458, Davis, Charles B., 1037 459-60, 461, 1031 Davis, Charlie, 642-43, 646 Davis, Erwin, 482 dissenting opinions in, 459-61 Due Process Clause and, 456-57, 460, 465 Davis, J. Warren, 1070, 1071, 1072 employment relationship and, 461 Davis, John Aubrey (New Negro Alliance), factual background, 451-52 "fundamental" facts in, 455, 457-58, 461 Davis, John (federal judge), 1031 government strategy in, 454-55 Davis, John W. (solicitor general), 25, 113, 115, "in accordance with law" standard, 459 167, 188, 212, 406, 723, 731, 732 - 33, 734,jurisdictional facts in, 453-54, 455, 737-38, 765 Davis, Kenneth Culp, 212 457–58, 461 lower court proceedings, 453-54 Davis, Norman, 482 Davis, Polk, Wardwell, Gardner, and Reed (law majority opinion in, 455, 456-59 Progressivism and, 461, 462-63 firm), 865 reaction to, 1046 Dawkins, Ben, 719 workers' compensation systems and, 457 Dawson, Charles, 188 Dawson, John, 153-54, 156 Crystal City Glass Workers Union, 1016-17 Cummings, Homer, 148-49, 150, 156, 179-80, Day, Luther, 1002-3 251, 257, 296, 318, 484, 487, 517, 770, Day, William, 556, 899, 1053 Debs, Eugene V., 681 889-90, 1091 Cummins, Albert, 889 Debtor relief laws, Contracts Clause and, 122. Cuquet, Fernando, 662 See also Blaisdell case Decatur, Stephen, 777 "Decision of 1789," 476–77, 478, 485 Curtiss, Glenn, 494 Curtiss-Wright case briefs in Supreme Court, 497-99 Declaration of Independence, 158 company strategy in, 497-99 Declaratory Judgment Act Congressional versus presidential power, generally, 782, 842-43 499-500 advisory opinions and, 752 government strategy in, 497 amendments of, 755-56 inherent powers of president in foreign arguments in favor of, 750, 753 affairs, 499-500, 501-2, 510, 511 case or controversy requirement and, lower court proceedings, 496 751-52, 753, 754, 755 majority opinion in, 499-502 conservatives and, 756 nondelegation doctrine in, 496, 497-99 constitutional questions and, 756-57 reaction to, 501-2 FDR and, 750 insurance and, 755 retrial in, 501 Curtiss-Wright Export Corporation, law review notes on, 755-56 494-96, 501 opposition to, 751, 752 Progressives on, 756, 757 Cushman, Barry, 4, 65, 261, 300-1, 310, 1140, 1155, 1156, 1157-58, 1159-63 taxation and, 753, 754 Czolgosz, Leon, 623, 682 upholding of, 749, 755 Declaratory Judgments (Borchard), 750 Dabney, Virginius, 669 Deference Dahl, Robert, 5 administrative law and, 435 Daily Worker civil liberties and civil rights and, 1045 on Herndon case, 713 freedom of speech and, 1044

1182

on Scottsboro cases, 618, 624, 627-28

in Near v. Minnesota, 745-46



INDEX

nonjusticiability versus, 749 fundamental rights and, 469 rate-making and, 383-88 jurisdictional facts and, 469 De Jonge, Dirk, 702-6 questions of fact versus questions of law, Delaware 469-71 diversity jurisdiction and, 910-13 Dentists, price advertising by, 267, 268 Denver & Rio Grande Western Railroad, 766 venue and, 845 Del Rossi, Louis, 605-6 Department stores, graduated gross receipts DeLong, J. Bradford, 199 taxes and, 962-63 Democracy DePauw University, 726 administrative law and, 519 Deportation, 450-51, 466-67, 468 administrative state as threat to, 517 De Portibus Maris (Hale), 65 demonstrations and, 1060 Depreciation, 446 Frankfurter on, 52 Depression. See Great Depression DePriest, Oscar, 671 Democratic Party. See also specific individual African Americans and, 613 Derivative actions Ashwander case as, 757-62, 945-46 American Liberty League and, 167 Black and, 315 constitutional questions and, 757-62 Brandeis and, 24 TVA and, 757-58, 759-60, 945-46 Butler and, 25 "Destroyers-for-bases" deal, 509-10 Cardozo and, 30-31 Deutsch, Eberhard P., 719, 722-23 CIO and, 1078 Dewey, John, 46, 558, 560, 561-62, 612, coalition in, 669, 761-62 1136-37 in Congress, 256 Dewey, Thomas, 497, 581 conservatives in, 473-74 Dewson, Molly, 296 Constitution and, 253 Dial, Cliff, 637 Court-packing plan and, 253, 259, 260-61 Dicey, Albert Venn, 512-13, 517, 524, 541, Davis and, 113, 731 546, 547 FDR and, 255-56, 493, 706 Dichotomies FTC and, 482-84 classical-modern dichotomy, 1146, 1149-53 conservative-liberal dichotomy, 2-3, 1146, Guffey Bituminous Coal Conservation Act and, 225-26 1147-48, 1163-64 Hughes Court and, 783 externalist-internalist dichotomy, 2, 4, interest group pluralism and, 416-17 1159-60, 1162-64 in Louisiana, 662-63, 664, 665 formalist-realist dichotomy, 2, 3, 934, 1146, McReynolds and, 21 1149-53, 1163-64 minimum wage and, 236 in Hughes Court, 2, 1146, 1163-64 in Minnesota, 113 progressive-reactionary dichotomy, 2-3, Mitchell and, 671 1146, 1163-64 Dick, Charles, 899-900 race and, 610 Reed and, 317 Dickerson, Earl, 805 in South, 648-49 Dickinson, John, 46, 226-27, 387, 406, 430, Supreme Court, control of, 313, 1043 446-71, 547 in Texas, 648-55 Dickinson, Oliver, 1031 Walter-Logan Bill and, 545 Dill, Clarence C., 482-83 "White Primary" cases and, 649, 650–51, 653–54 (See also "White Primary" cases) Dillon, John, 36 Dinwoodey, Dean, 249, 419, 531, 986-87 Demonstrations Dirba, Charles, 619 "Direct/indirect" test, 32-33 Court versus state law regarding, 1060 democracy and, 1060 Disability insurance, 151-52 Hague v. CIO (See Hague v. CIO) Disque, William, 671 labor law and, 812-14 Dissenting opinions, 333-35 District of Columbia property-based analysis of, 1067, 1069, 1071-72, 1074-75 criminal law in, 569 public order and, 1072, 1073, 1074 disqualification of jurors in, 573 judicial salaries in, 157-59 De novo review in administrative law criticism of, 468-69 minimum wage in, 231-32, 272, 304, 1157 in Crowell v. Benson, 1031, 453-54, 458, New Negro Alliance case (See New Negro 459-60, 461 Alliance case)



INDEX

District of Columbia (cont.) "line of division" regarding incorporation, rent control in, 123 1055-56 Palko v. Connecticut (See Palko v. Wage Board, 231 Diversity jurisdiction Connecticut) Article III and, 852-53 Prohibition and, 594 in Black & White Taxicab Co. case, 859-60 Double taxation, 103-4, 105, 366 choice of law and, 910 Douglas, William O. generally, 827 corporations, as favoring, 853-55 Eleventh Amendment and, 785-86 antitrust law and, 975, 982-84 Equal Protection Clause and, 860-61 in Apex Hosiery case, 1033 Erie Railroad Co. case (See Erie Railroad as associate justice, 323 Co. case) back pay and, 1004, 1005 "fellow servant" rule and, 858-59 bank accounts, and taxation of, 362 Black and, 333 general federal common law (See General casebooks, 321 federal common law) historical background, 852-55 chain stores and, 966 civil liberties and civil rights and, 321-22, judicial bias and, 854 Judiciary Act of 1789 and, 853 Progressives and, 858 in Classic case, 663, 664, 665-66 Rules of Decision Act and, 853, 855 coal industry regulation and, 356-57 "social litigation system," 853-55 in Coleman v. Miller, 797 Swift v. Tyson (See Swift v. Tyson) company unions and, 1012 Dividends at Conference, 335 income tax deduction for, 363-64 dissenting opinions and, 334-35 (See also income tax on, 368-69 specific case) Docket books, 1157-58 effective assistance of counsel and, 635 Doctrinal time, 6-7 employment broker licenses and, 362-63 Dodd, E. Merrick, 1112-13 Federal Rules of Civil Procedure and, 894 Dodd, Walter F., 750-51 fire insurance companies, taxation of, Dodge Lectures, 49, 423, 433-34, 463 366-67 Frankfurter and, 321 Doherty, Rumble, and Mitchell (law firm), 841 gasoline tax and, 376-77 in *Gobitis* case, 1133, 1135 Domicile for purposes of taxation, 102-5 Donald, Malcolm, 212-14 in Gold Clause cases, 406 Donnan, John W., 60 independent state grounds and, 840-42 Donnellon, James, 1046–47 Donovan, William J. "Wild Bill," 483–84, 488 interstate transportation and, 355-56 labor picketing and, 1106, 1109, 1111 Dormant Commerce Clause as liberal, 323 generally, 369-70 life of, 320-21 automobile caravans and, 824 McReynolds and, 22 "competing lines of authority" and, 371-72 in Meadowmoor case, 1106, 1109 milk price regulation and, 347 Congressional silence and, 370 in Morgan cases, 539 direct versus indirect effect, 372 formulas and, 371-77 Native Americans, taxation of, 885 NLRA and, 1020 gasoline tax and, 375-77 gross income tax and, 374-75 nomination as associate justice, 321-22 historical background, 369-70 nondelegation doctrine and, 358, 359-60 Legal Realism and, 371 Prohibition and, 602, 603-4 milk industry and, 410-12 rate-making and, 449 sales and use taxes and, 373-74 Mitchell case and, 672-73 nondiscrimination and, 409 standing and, 775-77, 781 statutory interpretation by, 927, 929, 930-31 preemption versus, 370 sales and use taxes and, 371-74 Stone and, 320 truck weight limits and, 408-9 "substantial evidence" standard and, 1026 Dorsey, Hugh M., 713 in Thornhill v. Alabama, 1097 Double Jeopardy Clause title to property and, 404 Dowling, Noel T., 377, 463-64, 1064 continuing jeopardy, 1052-53 incorporation, 1052, 1053-55 Drake University, 125



INDEX

Dubofsky, Melvin, 986, 1000 Economic regulation. See also specific topic or Du Bois, W.E.B., 1089 program Due Process Clause antitrust law (See Antitrust law) administrative law and, 433, 455, 463 civil liberties and civil rights versus, 746, Alton Railroad case and, 240-41 1044, 1057-58, 1148 Blaisdell case and, 124-25 Commerce Clause (See Commerce Clause) Brown v. Mississippi and, 639-40 Dormant Commerce Clause (See Dormant Carter Coal Co. case and, 230 Commerce Clause) Chambers v. Florida and, 644 economic planning, FDR on need for, choice of law and, 898, 899, 907 941-43 coerced confessions and, 929-30, 644 General Welfare Clause (See General common law and, 1080 Welfare Clause) "Constitutional Revolution of 1937" and, incoherency of New Deal policies, 943 interest group pluralism, emergence of, corporations and, 720 984-85 Crowell v. Benson and, 456-57, 460, interstate commerce (See Interstate commerce) effective assistance of counsel and, 1046 price regulation (See Price regulation) freedom of contract and, 1144 recovery versus reform, 943 freedom of press and, 1046 state regulation of business (See State freedom of speech and, 685-86, 812, regulation of business) Economy Act of 1933, 151, 152 813-14, 1046, 1144 fundamental rights and, 1143 Edgerton, Henry, 774 Gold Clause cases and, 155 Edison, Thomas A., 971 Hamilton case and, 741-42, 743 Edison Electric Institute, 292-93, 760 ICC and, 93 Education incorporation, 741-42 colleges and universities (See Colleges and jury views, right of defendant to be present universities) at, 1047-51 foreign languages, teaching of, 556-57 liberty (See Liberty) liberty of schoolteachers, 556-57 licensing fees and, 328 private schools, state assistance to, 717 lynching and, 614-15 prohibition of private schools, 717 racial discrimination in salaries of as mechanism of incorporation, 1050-51 teachers, 819 minimum wage and, 342 school segregation (See School segregation) Near v. Minnesota and, 697 state assistance to private schools, 717 Nebbia case and, 269 tenure of teachers, independent state grounds prior restraint and, 697 and, 835-39 Edward Waters College, 643 Pullman Co. case and, 818, 819 Radford case and, 188, 189 Effective assistance of counsel, 626, 634–35, rate-making and, 384-86, 387, 441 1046 religious freedom and, 1124 Eighteenth Amendment. See also Prohibition replacement workers and, 992 generally, 194 state regulation of business and, 361 formulas versus "conceptions of basic needs," 111–12 substantive due process (See Substantive due government structure and, III-I2 process) vested rights and, 75 repeal of, 605 West Coast Hotel v. Parrish and, 273 seizure of ships and, 588 Duffus, R.L., 745, 746 time limitation, 797 Duke Law School, 965 Eisenhower, Dwight, 710 Dummer Academy, 643 Ejusdem generis, 919, 921-22 Duncan, Wilson, 81 Dunham, Allison, 1134 Classic case (See Classic case) Dunlap, R.W., 520, 533 Congressional authority regarding, 661-63, DuPont family, 167, 254 664, 665 constitutional right to vote in primary Early, Stephen, 199 elections, 661-63, 664, 665 Eastman, Joseph, 238, 671-72 "grandfather clauses," 657-59



INDEX

Elections (cont.)	fire insurance companies, taxation of,
literacy tests, 657	366–68
right to vote, Child Labor Amendment	freedom of press and, 718
(proposed) and, 800–1	freedom of speech and, 814
voter fraud, 659–60	Gaines case and, 668
"White Primary" cases (See "White	intergovernmental tax immunity and, 264
Primary" cases)	licensing fees and, 328
Electricity generation	Rules of Decision Act and, 860-61
excise taxes on, 101, 262-63	sales and use taxes and, 841
as interstate commerce, 101-2	severance tax and, 717
Eleventh Amendment. See also Sovereign	state income tax exemptions and, 202-5,
immunity	363–64
citizens of other states, suits against states	state regulation of business and, 361
by, 785	taxation of newspapers and, 718
Contracts Clause and, 834	Equitable estoppel, 883–84
diversity jurisdiction and, 785-86	Erie Railroad, 851–52
foreign nations, suits against states by,	Erie Railroad Co. case
786–90	appeal in, 865
formalism and, 262	briefs in Supreme Court, 866
formulas and, 262	choice of law and, 901, 908-9
state officers, suits against, 790, 791, 793	choice of law in post-Erie cases, 878
Eliel, Richard, 1069	Congressional authority and, 867–68, 869,
Eliot, Thomas, 209	871–72, 873
Ellington, Arthur "Yank," 636-37, 638, 641	constitutional basis of, 867, 868, 869,
Elliott, Marion, 366	871, 873
Ellis, Howard, 690	definiteness of decisions and, 865-66
Ellis, William Hull, 643	dissenting opinion in, 867, 868, 870, 871
Ellison, Ralph, 715	factual background, 851, 864
Ellsworth, Oliver, 870–71	FDR and, 872
Elmore, James, 929-30	Federal Rules of Civil Procedure and,
Elmore, W.H., 929-30	887, 890
Embargoes, 495–96	filling gaps with state law in post-Erie cases
Emergency Banking Act, 146–47	882-85
Emergency powers	general federal common law precluded by,
Blaisdell case and, 124, 125, 126,	877–78
129–30, 133	interest group pluralism and, 909
Nebbia case and, 143–44	laches in post-Erie cases, 882–83
NIRA and, 303–4	legacy of, 875
NLRA and, 303-4	lower court proceedings, 851–52
price regulation and, 162	majority opinion in, 867-72
"switch in time" and, 303-4	oral arguments in Supreme Court, 866
Emergency Relief Appropriation Act of 1935,	petition for review, 865–66
768–69	positivism in, 873
Emerson, Thomas, 699	Progressivism and, 873
Eminent domain. See Takings	reaction to, 871, 872–74
Emoluments Clause, 317	remand of, 867, 874
Enlightenment, 1106, 1107, 1108, 1109	Rules of Decision Act and, 867, 869, 870
Ennis, Edward, 935	scope of review in post- <i>Erie</i> cases, 878–82
Entrapment, Prohibition and, 589–92	specialized federal common law in post-Eric
Epstein, Henry, 162–63	cases, 885–86
Epstein, Lee, xiv–xv, 5	stay in, 865
Equal Protection Clause	substantive questions in post-Erie cases,
bank accounts, taxation of, 361-62, 793	876–77
chain stores and, 958-59, 965, 966	trial in, 864–65
corporations and, 720	Ernst, Daniel R., 301, 431, 539, 1155–56
diversity jurisdiction and, 860–61	Ernst, Edward G., 955
domicile for purposes of taxation and, 104	Ernst, Morris, 627–28, 633, 1066–67, 1068,
estate tax and, 365–66	1069



INDEX

Ervin, Robert Tait, 453-54 property damage and, 994, 995-96, 997-98 Espionage Act, 438, 680, 682 reaction to, 1000-1 Establishment Clause reinstatement of striking workers and, incorporation, 78-79, 717 989-93, 994-95 private schools, state assistance to, 717 supplemental memorandum in, 997 statutory interpretation, 78 termination for good cause and, 996-98, 999 unfair labor practices and, 994-95, 998-99 violence and, 994, 995-96, 997-98 domicile for purposes of, 330-31, 365-66 Equal Protection Clause and, 365-66 Fansteel Metallurgical Company, 993-94 formulas versus "conceptions of basic Fardy, James J., 1102-3 needs," 57-63 Farley, James, 254 gift tax versus, 59-63 Farm Loan Act, 883 intangible property and, 365-66 spousal income and, 61 Agricultural Adjustment Act (See tenants by entirety and, 58-59 Agricultural Adjustment Act (AAA)) Ethiopia, Neutrality Acts and, 494 bankruptcy law and, 186 Eugenics, 612-13 Blaisdell case (See Blaisdell case) "The Evil Hour" (play), 825 conciliation commissions, 187 declining income of, 120-21 Excise taxes on alcohol, 201-2, 263 dumping of sewage water, common law on electricity generation, 101, 262-63 injunction against, 876 Ex Post Facto Clause, licensing fees and, 328 "farm holidays," 120-21 Externalist-internalist dichotomy, 2, 4, foreclosures and, 120-21 Frazier-Lemke Act and, 186-90 (See also 1159-60, 1162-64 Radford case) Factions, 40-41, 43 liquidation of, 186 Fahy, Charles, 278, 282, 392-93, 723, 986, Minnesota Mortgage Moratorium Act, 995-97, 1003-4, 1008 121-22, 123, 125, 135 (See also Blaisdell Fainsod, Merle, 979, 984-85 Fair Labor Standards Act of 1938 (FLSA), nationalization of mortgages, 186-87 Black and, 315, 352-53 New Deal, agricultural policies in, 942 Child Labor Amendment (proposed), effect overproduction and, 205 on, 802 production control, effect of, 351 Radford case (See Radford case) enactment of, 315 interstate transportation and, 352-56 violence and, 121 Farrar, James, 593 minimum wage and, 352-56, 359-60 FCC. See Federal Communications Fairman, Charles, 117 Commission (FCC) administrative law and, 438-39, 530-31, Federal Bar Association, 54 536-37, 538 Federal Bureau of Investigation, 27, 568-69, freedom of speech and, 685-86 584, 605 Falcone, Michael, 605-6 Federal Communications Act of 1934, 582-83, False statements, statutory interpretation and, 585, 586, 778-80 Federal Communications Commission (FCC) 921-22, 928-29 Fansler, Michael, 835-36 generally, 87, 540 Fansteel case radio licenses, 549-50 briefs in Supreme Court, 995-96 standing and, 778-80, 781 company strategy in, 995-96 Federal Corrupt Practices Act, 660 company unions in, 994, 998 The Federal Courts and the Federal System concurring opinion in, 998 (Hart and Wechsler, eds.), 748, 782 dissenting opinion in, 998-1000 Federal Farm Board, 317 employees, striking workers as, 998 Federal jurisdiction factual background, 993-94 allocation of cases and, 749, 782-83, government strategy in, 995 803-4 labor picketing compared, 999-1000 antitrust law and, 828 majority opinion in, 993, 997-98, 999-1000 appeals versus certiorari, 831-32, 843 NLRB order in, 989-95 "arising under federal law," 828-30 certiorari versus appeals, 831-32, 843 oral arguments in Supreme Court, 996



INDEX

Federal jurisdiction (cont.) Rules Enabling Act and, 890 Congressional authority over, 831 substance versus procedure, 890-91, 892, coordination of state and federal litigation, 893, 895 Federal Rules Service, 912 847-49 copyright law and, 825-26 Federal Trade Commission Act, 482, 484 Federal Trade Commission (FTC) efficiency and, 749-50, 827-30 federalism and, 827-28 generally, 833 Democratic Party and, 482-84 formalism and, 825 Frankfurter on, 747-49, 782, 803, 804, 827, fact-finding by, 514 828, 843, 849-50 nondelegation doctrine and, 484-85 freedom of speech and, 812-14 NRA compared, 440 "how" questions versus "where" questions, Progressive vision of, 424 803-4 public utility holding companies and, 971 independent state grounds (See Independent as quasi-judicial and quasi-legislative state grounds) body, 484 removal of Humphrey from, 5, 247, 480-86 joinder of actions and, 828 jurisdictional amount (See Jurisdictional Securities Act of 1933 and, 481 amount) Theodore Roosevelt and, 25 labor boycotts and, 828 trade associations and, 976 Legal Realism and, 749-50, 783 unfair competition and, 171, 194, 195-96 "needless friction" in, 849 Federalism. See also Tenth Amendment Progressivism and, 747-49 in Australia, 400 scope of, 825 Black on, 882, 884-85 separate causes of action, 826-29 in Canada, 400 sovereign immunity and, 790 conservatives and, 699-700 three-judge courts, 843-45 federal jurisdiction and, 827-28 unfair competition and, 825-26 federal unemployment tax and, 292 venue, 845-47 (See also Venue) General Welfare Clause and, 342 Federal Power Commission, 113-14 incorporation and, 1056 Federal Radio Act, 88, 89, 158, 582-83, independent state grounds and, 832 intergovernmental tax immunity and, 585, 586 Federal Radio Commission generally, 87 recognition of foreign governments as creation of, 88 province of national government, 504-8 formulas versus "conceptions of basic Sutherland on, 491-92 needs," 87-90 venue and, 847 The Federalist Papers, 40, 158 Near v. Minnesota and, 701 nondelegation doctrine and, 182 Federation of Flat Glass Workers, 1016-17 Feller, Abraham, 356 "Fellow servant" rule, 858–59 NRA compared, 440 replacement of, 488 Federal Reserve Board, 488 Ferguson, Garland S., 482 Federal Rules of Civil Procedure Field, Stephen, 860-61, 862-63, 868-69 generally, 868, 876-77 Fifteenth Amendment administrative state and, 540, 542-43 Classic case and, 666 "grandfather clauses" and, 658 adoption of, 890 "White Primary" cases and, 651 Advisory Committee, 890, 894 causes of action, 827 Fifth Amendment Double Jeopardy Clause (See Double class actions and, 809 Congressional versus Court authority to Jeopardy Clause) promulgate, 892, 893-94 Due Process Clause (See Due Process construction of, 890 Clause) contempt under, 892-93 federal unemployment tax and, 289 Erie Railroad Co. case and, 887, 890 incorporation, 639 historical background, 888-90 indictment requirement, 1053, 1055 jurisdictional amount and, 823 indictment versus information, statutory jurisdiction and, 328 interpretation and, 919-20 physical examinations under, 891-95 right to counsel and, 626 pleadings, 890 self-incrimination privilege, 639, 1053



INDEX

takings (See Takings) Takings Clause, 78, 523 Filled Milk Act of 1923, 410, 411, 412 Finerty, John, 1032-33 Firestone Tire and Rubber Company, 988 First Amendment administrative law and, 441 Butler case and, 217 freedom of press (See Freedom of press) freedom of speech (See Freedom of speech) Free Exercise Clause (See Free Exercise Clause) ICC and, 441 interest group pluralism and, 47 labor law and, 1038, 1039 NLRA and, 278 nondelegation doctrine and, 438 postmaster general and, 441 reasonableness standard and, 327 religious dissent versus political dissent, 744-46 religious freedom (See Religious freedom) First National Bank in Meridian, 829 First National Bank of Meridian, 829 Fish, Hamilton, 236, 493 Fisher, Adrian S., 760 Fitzgerald, F. Scott, 1071 FitzHenry, Louis, 410-11 Flag salute, 1126. See also Gobitis case Fliter, John A., 120, 135, 162 Florida antitrust law in, 327-31 chain stores in, 960-62, 970 Chambers v. Florida (See Chambers v. Florida) estate tax in, 330-31 imported cement, taxation of, 848-49 Railroad Commission, 97-98 State Road Department, 848-49 trucking industry, regulation of, 97-98 FLSA. See Fair Labor Standards Act of 1938 (FLSA) Fly, James Lawrence, 977, 979 Flynn, John T., 955-56 Flynn, Thomas, 1102-3 Foley, Hoag & Eliot (law firm), 1047-48 Folsom, Fred G., Jr., 666 Food and Drug Administration, 434 Food and Drugs Act of 1906, 79-81, 411 Food labeling laws, 329-30 Ford, Henry, 660, 689-90 Ford Motor Company, 537 Fordham University, 1020-21 Foreign affairs administrative state and, 490 Curtiss-Wright case (See Curtiss-Wright "destroyers-for-bases" deal, 509-10

embargoes, 495-96 FDR and, 493 Hamilton on, 490 Hughes on, 501 inherent powers of president, 499-500, 501-2, 510, 511 president and, 490 recognition of foreign governments as province of national government, 504-8 Soviet Union, United States recognition of, 503, 504–8 Sutherland on, 490-92, 501 war power, 491-92 Forfeitures, Prohibition and, 594-96, 602-4 Formalism. See also Formulas generally, 57 Brandeis and, 115 changing circumstances and, 265 choice of law and, 896-97, 907 decline of, 932, 933-34 defined, 36 doctrinal setting and, 269 Eleventh Amendment and, 262 federal jurisdiction and, 825 formalist-realist dichotomy, 2, 3, 934, 1146, 1149-53, 1163-64 Holmes and, 103 Hughes and, 669, 1152 at inception of Hughes Court, 1 interest group pluralism and, 417 intergovernmental tax immunity and, 263, 264 in Jones v. SEC, 530-31 Legal Realism, move toward, 934 Stone and, 104-5, 907 Sutherland and, 739 vested rights and, 76 Formulas. See also Formalism in administrative law, 510, 525 "affected with a public interest" test and, 65-73 application of, 33 apportionment and, 112-13 in Blaisdell case, 129, 263 bureaucratic appointments and, 113-15 Butler and, 32 Cardozo and, 35-36, 37, 264 chain stores and, 965 changing circumstances and, 265-66 complexity of problems, 75, 86 "conceptions of basic needs" versus, 32-33, 37, 57, 73-74, 117-18 (See also specific topic) "direct/indirect" test, 32-33 Dormant Commerce Clause and, 371-77 Eighteenth Amendment and, 111-12 Eleventh Amendment and, 262 estate tax and, 57-63



INDEX

Formulas (cont.)	Fourth Amendment
Formulas (cont.)	
Federal Radio Commission and, 87–90	automobile searches and seizures, 595,
flexibility and, 267	601–2
in Gaines case, 669	"mere evidence" rule, 599
in Gold Clause cases, 263, 264	private homes, searches of, 600
Hughes and, 3, 12–13, 37, 57–63, 136, 336,	Prohibition and, 597-604
525, 555, 1151, 1152	search incident to lawful arrest, 597–98
ICC and, 90–95	warrant requirement, 598–600
intergovernmental tax immunity and, 105–8,	wiretapping and, 585–86
263–64, 403	Fox Films, 832
interstate commerce and, 101-5	Fraenkel, Osmond K., 630, 703–5, 838, 969,
in Jones & Laughlin case, 287, 305	1031, 1061–62
Legal Realism and, 392	France
in legal theory, 32–33, 35–36, 37	administrative law in, 512, 517, 541
martial law and, 115-17	debt of, 787–88
price regulation and, 63-65	droit administratif, 512
problems with, 336	FDR and, 508-9
Prohibition and, 111–12	German invasion of, 509
Roberts and, 57-63	Neutrality Acts and, 494
statutory interpretation and, 78–86	Franco, Francisco, 1124
Stone and, 12–13, 32–33	Frank, Jerome, 301, 770, 781–82
structure of government and, 111–17	Frank, Leo, 713
Sutherland and, 305–6	Frankfurter, Felix
"switch in time" and, 305–7	generally, 69, 172, 311–12, 666, 760, 829,
vested rights and, 75–77	883, 948, 953, 969–70
Fortas, Abe, 296	abstention and, 387
Fortune (magazine), 31	administrative law and, 49, 51–53, 54, 87,
Forum-shopping, 909–10	89, 423, 424, 429, 430–31, 433–34,
Fosdick, Harry Emerson, 736	463–64, 467, 469, 517–18, 547, 548
Fosdick, Raymond, 566	on administrative state, 423, 463, 467, 548
Foshee, John, 635	American Liberty League and, 168–69
Foster, Rufus, 719	anti-Semitism and, 320
"Four Horsemen." See also specific justice	antitrust law and, 982
generally, I, II47	as associate justice, 324
Hughes voting with, 248	bank accounts, and taxation of, 362
Roberts voting with, 248	Black and, 324
use of term, 1147–48	Blaisdell case and, 134
Fourteenth Amendment	Butler case and, 214, 301
Blaisdell case and, 127	Carolene Products Footnote 4 and, 1057
class actions and, 809	Chambers v. Florida and, 645-46
Classic case and, 661, 662, 663–64, 666	civil liberties and civil rights and, 551, 564
corporations, applicability to, 326-27, 368	1113–14
Due Process Clause (See Due Process	civil service and, 473, 474
Clause)	in <i>Classic</i> case, 663–64, 665
economic regulation and, 122-23	coerced confessions and, 647
Equal Protection Clause (See Equal	in Coleman v. Miller, 797, 799–802
Protection Clause)	company unions and, 1012
Gold Clause cases and, 152-53	at Conference, 335
incorporation (See Incorporation)	confirmation as associate justice, 320
liberty and, 556	on consensus, 335
Nebbia case and, 142	constitutional interpretation and, 1115
price regulation and, 64	contempt and, 930
Pullman Co. case and, 816	corporate income tax and, 368–69
right to counsel and, 626	on criminal law, 52–53, 566
school segregation and, 668	in Crowell v. Benson, 461
state action requirement and, 650, 651	Declaratory Judgment Act and, 751, 752
state ratification subsequent to rejection, 797	deference and, 383–88
"White Primary" cases and 650	on democracy 52



INDEX

derivative actions, constitutional questions and, 760-62 Dickinson and, 464 diversity jurisdiction and, 860 Dodge Lectures, 49, 423, 433-34, 463 Douglas and, 321 Due Process Clause and, 1050-51 Erie Railroad Co. case and, 871, 872-73 estate tax, and domicile for purposes of, 330-31 FDR and, 251, 319, 1043 on federal jurisdiction, 747-49, 782, 803, 804, 827, 828, 843, 849–50 Federal Rules of Civil Procedure and, 894 fire insurance companies, taxation of, 364, 366-68 gasoline tax and, 376-77 in Gobitis case, 1131, 1133-40, 1144 Gold Clause cases and, 148, 155 "grandfather clauses" and, 658 in Hague v. CIO, 1072 Hughes and, 56, 320, 333 in Hutcheson case, 1038-40 ICC and, 514 as intellectual and activist, 319 inter-chambers materials and, xiv intergovernmental tax immunity and, 400-3 Jones & Laughlin case and, 283 Jones v. SEC and, 528, 529 judicial time and, 4-5 labor law and, 395, 396 labor picketing and, 1078-79, 1106-12 law clerks and, 337 Legal Realism and, 369, 932 legal theory and, 55, 56 life of, 318-19 in Meadowmoor case, 1106-10, 1113, 1114 minimum wage and, 232 modification of opinions by, 932-34 in Morgan cases, 539 Native Americans, taxation of, 884-85 new approach of, 330-32 New Deal and, 248 on NIRA, 173 NLRA and, 1020 nomination as associate justice, 320 nondelegation doctrine and, 177-78 Norris-LaGuardia Act and, 1079-80, 1108 Panama Refining case and, 178 papers of, 298 on "pigeon-holing," 407 Progressivism and, 49 Prohibition and, 602 in Pullman Co. case, 814-15, 819-21 rate-making and, 383-88, 448-49 Roberts and, 297-98, 309 Sacco and Vanzetti case and, 619 on Soviet Union, 52

standing and, 775-77, 781 on stare decisis, 331-32 state income tax exemptions and, 203, 205 statutory interpretation by, 926-27, 929 Stone and, 27–28 on Supreme Court, 51–52 "switch in time" and, 1153 systematic legal theory and, 1152 in Thornhill v. Alabama, 1097 on three-judge courts, 843-45 Tipaldo case and, 236 title to property and, 404 on venue, 845, 846-47 Wilson and, 319 wiretapping and, 586-87 writing style of, 376 Fraud in class actions, 807-8 Frazer, Spaulding, 1068 Frazier, Lynn, 186-87, 293 Frazier-Lemke Act drafting of, 1159 FDR on, 186-87, 190 Hoover on, 187 Radford case and, 186-90, 248, 251 (See also Radford case) "switch in time" and, 303, 304-5 Vinton case and, 293-95 Free Exercise Clause accommodation of religious beliefs, 737 conscientious objectors and, 729 Hamilton case (See Hamilton case) incorporation, 740 liberals and, 728 Macintosh case (See Macintosh case) military draft and, 729 naturalization and, 728 political dissent versus religious dissent, 744-46 polygamy and, 728-29 Freedom of contract Due Process Clause and, 1144 NLRA and, 989 Tipaldo case and, 235 unfair labor practices and, 989 West Coast Hotel v. Parrish and, 273 Freedom of press ACLU and, 693, 700 Commerce Clause and, 724 convergence of Progressives and conservatives, 722 Due Process Clause and, 1046 Equal Protection Clause and, 718 Huey Long and, 700, 717-22 incorporation, 719, 720 Near v. Minnesota (See Near v. Minnesota) NLRA and, 723-25 NLRB and, 725 prior restraint (See Prior restraint)



INDEX

Freedom of press (cont.) Friedman, Richard D., 166, 219, 257-58, 735, religious dissent versus political dissent, 1159 Friedman-Harry Marks Company, 278, 744-46 taxation of newspapers, 717-22 279-80, 286, 287, 305, 306, 417 Freedom of speech Friendly, Fred, 690, 696, 883 generally, 4 Friendly, Henry, 829, 970 ACLU and, 703-4 Friendships among justices, 333 Carolene Products Footnote 4 and, 1061, Fromkin, Morris, 1085-86 1064, 1074 Frothingham, Harriet, 208 CIO and, 1065, 1066 Frye, Brian L., 851 FTC. See Federal Trade Commission (FTC) circumstances, relevance of, 681 "clear and present danger" test, 563, 681, Fuchs, Ralph, 142, 465-66, 524 684, 685, 715, 1099 Full Faith and Credit Clause Communist Party and, 679, 682-83, 702, choice of law and, 898-99, 901, 903-8, 909 1065-66 general federal common law and, 877-78 Full Fashioned Hosiery Workers, 1030-31 criminal anarchy laws and, 682-85 "Fundamental" facts, 455, 457-58, 461 criminal attempt and, 679, 680-82 deference and, 1044 Fuller, Melville, 14 demonstrations (see Demonstrations) Fundamental rights Due Process Clause and, 685-86, 812, Carolene Products Footnote 4 and, 1143 813-14, 1046, 1144 de novo review and, 469 duty of municipalities to accommodate, 1074 Due Process Clause and, 1143 Equal Protection Clause and, 814 freedom of speech as, 1063-64 fairness and, 685-86 labor picketing as, 1109 FDR and, 706 federal jurisdiction and, 812-14 G.A.F. Seelig, 344 as fundamental right, 1063-64 Gaines, Lloyd, 667, 670 Hague v. CIO (See Hague v. CIO) Gaines case handbills and, 1061-64 briefs in Supreme Court, 667-68 Herndon case (See Herndon case) defense strategy in, 669 incidental impact on, 1098 dissenting opinion in, 669 incorporation, 1055 Equal Protection Clause and, 668 interest group pluralism and, 1078 factual background, 667 jurisdictional amount and, 812, 814 formulas in, 669 labor law and, 812-14 government strategy in, 668 labor picketing (See Labor picketing) lower court proceedings, 667 majority opinion in, 669 police power versus, 1062 political doctrine and, 679, 682-85 reaction to, 669-70 Privileges and Immunities Clause and, Gallagher, Thomas, 582-83 812-14 The Gang: A Study of 1313 Gangs in Chicago Progressives and, 560-64 (Thrasher), 607 property-based analysis of, 1067, 1069, Gangs of New York (Asbury), 607 1071-72, 1074-75, 1100 Gardner, George, 1131, 1133 proximity and, 680 Gardner, Lucien, 630 Gardner, Warner, 661, 935 public demonstrations and, 812-14 public order and, 1072, 1073, Garrick, James, 1046-47 Garrison, Lloyd, 221-22, 315, 1070 1074 red flag display, 686-89 Gasoline tax, Dormant Commerce Clause and, religious dissent versus political dissent, 375-77 Gaynor, Janet, 832 744-46 "substantive evil" and, 679, 680-82 Gebardi, Jack, 82-84 World War I and, 679, 680 Geer, John, 707–8, 710, 712 Freidel, Frank, 171, 503 Geiger, Ferdinand A., 1085, 1086 Freud, Sigmund, 911-12 Gellhorn, Walter, 470, 515-17, 519, 542, 544, Freund, Ernst, 429-30 590, 710 Freund, Paul A., 194, 770, 905, 909, 913, General Electric, 88-89 935, 948 General federal common law Freyer, Tony, 855, 1041 generally, 852, 888



INDEX

choice of law and, 895	Neutrality Acts and, 494
Erie Railroad Co. case precluding, 877–78	Poland, invasion of, 509
Field critique of, 860–61, 862–63, 868–69	tolerance, effect of threat of Nazism on,
Full Faith and Credit Clause and, 877–78	1126
Holmes critique of, 861–63, 867, 868–69,	United Kingdom, war with, 509
870, 872	Gerofsky, Leon, 394–95
Progressive critique of, 852, 858, 859–60	Getz, Milton, 76–77
Rules of Decision Act and, 855	Getz & Brothers Corporation, 76
Swift v. Tyson and, 856–57	Gibson, Truman, 805
General Mills, 213	Gift tax, 59–63
General Motors, 988, 993	Gilbert, Cass, 11
General Welfare Clause	Gillman, Howard, 41, 42
as affirmative grant of government power,	Gilmore, Glenda E., 618, 707–8
205–6	Gilmore, Grant, 1149
Agricultural Adjustment Act and, 199-200,	Gin Sang Get, 450
210, 944	Gin Sang Mo, 450
Ashwander case and, 947, 948	Ginsburg, David, 954, 973
borrowing and, 944	Gitlow, Benjamin, 624, 682–83
Butler case and, 212–14, 215, 216, 218	Glass, Carter, 916
expansive view of, 206	Glaziers Union, 1036
federalism and, 342	Glueck, Sheldon, 566
Hamiltonian model of, 206, 208, 210,	Go-Bart Importing Company, 597–98
212–14, 216, 307, 944–45, 948	Gobitas, Lillian, 1127
historical debate on, 207	Gobitas, Walter, 1127
internal versus external powers, 211, 212–13	Gobitas, William, 1127
Madisonian model of, 206–7, 208, 210–11,	Gobitis case
212, 944, 947, 948	ABA in, 1131, 1132, 1138
New Deal and, 207–8	abstract nature of opinion, 1136-37
restrictive view of, 206–7	amicus briefs in, 1131-32
Social Security Act and, 292-93, 307	appeal in, 1129–30
Stone on, 209	balancing liberty and authority, 1129, 1132,
TVA and, 944–45	1133–34, 1138, 1139
unemployment insurance and, 307	briefs in Supreme Court, 1130–32
George III, 158	Carolene Products Footnote 4 and, 1132,
Georgia Georgia	
	1134, 1139
Child Labor Amendment (proposed)	compulsion and, 1131, 1132, 1138–39
and, 795	dissenting opinion in, 1134–35, 1136,
flag salute in, 1126	1138–39
Herndon case (See Herndon case)	factual background, 1126–27
Lovell v. City of Griffin (See Lovell v. City of	"false patriotism" and, 1129, 1130–31
Griffin)	government strategy in, 1130
suits between States and, 784-85	Jehovah's Witnesses strategy in, 1130-31
tobacco industry in, 350	judicial review and, 1138
Gerhardt, Philip, 397	legislative versus judicial authority, 1135,
Germany	1139
as administrative state, 517	majority opinion in, 1133-34,
anti-Semitism in, 701	1136–38
compulsory loyalty in, 1132	national unity and, 1133, 1136-37
dangers of populism compared to Nazism	oral arguments in Supreme Court, 1133
in, 716	parental authority and, 1137
demonstrations in, 1060	police power and, 1137–38, 1140
due process protection, effect of threat of	reaction to, 1140
Nazism on, 610, 645	religious significance of flag salute, 1131
FDR on, 508–9	trial in, 1127–29
France, invasion of, 509	Goff, Frederick, 566
freedom of speech, effect of threat of Nazism	Gold, Walter, 1086, 1087
on, 1095	Gold Clause cases
Jehovah's Witnesses in, 1126, 1129	attitudes of Administration toward, 250



INDEX

Gold Clause cases (cont.) overproduction as cause, 171, 941 bondholders and, 147-48, 151, 153-54, Progressives on, 170 ruinous competition as cause of, 275-76 155-56, 405-7 class legislation in, 267 underconsumption as cause of, 172 "conceptions of basic needs" in, 157 Great Northern Railway Company, 109-10 Court-packing plan, impact on, 299 The Greatest Story Ever Told (Oursler), 825 damages in, 153-54 Green, Edward, 330-31 Due Process Clause and, 155 Green, Hetty, 330-31 factual background, 146-47 Green, Thomas, 565 FDR and, 149-50 Green, William, 527, 1009 "Green Shirts," 740 formulas in, 263 formulas versus balancing in, 264 Greene, Nathan, 1078-79 Fourteenth Amendment and, 152-53 Greenlaw, Lowell, 818 Greenville Auto Sales, 603-4 gold certificates and, 147-48 government interest in, 149-50 Gregory, Charles O., 1034-35, 1084 Griffith, Virgil A., 638, 639-40 monetary system, power of government to create, 150-51, 154-56 Griswold, Erwin, 454, 752, 897 New Deal, impact on, 164-66 Grocery stores, graduated license taxes and, oral arguments in Supreme Court, 148-49 957-60 Groner, Duncan, 571, 573 private contracts and, 147-48, 150-51 private property and, 157 Grosjean, Alice Lee, 718 reaction to, 156–57, 164–66 Gross, Harry, 703 reporting of, 337 Gross income tax, Dormant Commerce Clause revisiting, 405-7 and, 374-75 statutory interpretation and, 152-53 Gross receipts tax takings and, 152 graduated gross receipts taxes, chain stores unenforceability of clauses, 146-47 and, 960-63 Goldberg, John C.P., 34 taxicab companies, 956 Grovey, R.R., 654 Goldstein, David, 1052-54, 1055 The Growth of the Law (Cardozo), 33, 35 Gompers, Samuel, 1029 Gooch, Arthur, 919 Grubb, William Irwin, 175, 946 "Good Neighbor" policy, 493, 494, 495 Guffey, Joseph, 223-24 Goodrich, Herbert, 911, 912, 913 Goodyear Tire and Rubber Company, 988 Guffey Bituminous Coal Conservation Act, 223-26, 227-28, 306, 356, 526, 1157. See Gordon, Lincoln, 979, 984-85 also Carter Coal Co. case Gordon, Robert, 513-14 Guilford, Howard, 691, 692-93, 697 Gulick, Luther, 488 Gould, Milton, 582 Gowen, Philip, 597-98 Gunnell, John G., 46 Graber, Mark, 561 Guthrie, Cravath, and Henderson (law firm), 21 Graduated gross receipts taxes, chain stores Guthrie, William, 929-30 and, 960-63 Hague, Frank, 1064-66, 1067-69, 1076-77, Graduated license tax, chain stores and, 957-60, 964-65 Gran Chaco War, embargoes and, 494-96 Hague v. CIO "Grandfather clauses," 657-59 ÅBA and, 1070–71, 1073–74, 1076, 1077 Granger Laws, 64-65 amicus briefs in, 1073-75 Grau, William, 600 appeal in, 1070-72 briefs in Supreme Court, 1072-75 Graves, Bibb, 633 Graves, Ireland, 818 demonstrations and, 1067, 1069, 1071-72, Gray, Horace, 19, 338 1074-75 Gray's Inn, 552 dissenting opinion in, 1076 Great Atlantic & Pacific Tea Company, 953, duty of municipalities to accommodate 964-65 speech, 1074 factual background, 1064-66 Great Depression farm incomes, decline in, 120-21 FDR on, 1076 FDR on, 171 government strategy in, 1073 influence on Court, xiv-xv injunction in, 1066, 1069-70 International Labor Defense in, 1071 milk industry, effect on, 139



INDEX

majority opinion in, 1075-76	Sutherland and, 25
oral argument in, 1072	Taft and, 24
petitions in Supreme Court, 1072	Teapot Dome scandal, 29
property-based analysis of freedom of	Harkness, Anna, 423
speech and, 1067, 1069, 1071–72,	Harlan, John Marshall, 42, 441, 554, 791, 1054
1074-75	Harlan, John Marshall, II, 1056–57
public order and, 1072, 1073, 1074	Harrison, Benjamin, 1031
reaction to, 1076–78	Hart, Henry M., Jr., 156–57, 470, 748–49,
trial in, 1067–69	782–83, 873, 890, 993, 1000–1, 1011
union strategy in, 1073	Hartl, Emil M., 955
Haines, Charles Grove, 252	Harvard College, 44, 212, 424-25
Hale, Matthew, 65, 267	Harvard Law Review
Hale, Richard, 733	on Erie Railroad Co. case, 863, 873
Hale, Robert L., 40, 74, 655-56	on individual versus social interests, 560-61
Hall, Frederic, 741–42	on jurisdictional amount, 823
Halle, Louis, 582–83, 584–86	on taxpayer standing, 771
Hamilton, Albert, 740	Harvard Law School, 22, 27–28, 134, 171, 212
Hamilton, Alexander	318, 338, 418, 424–25, 454, 474, 532,
on foreign affairs, 490	540–41, 559–60, 582, 707, 896, 933, 935,
General Welfare Clause and, 206, 208, 210,	1052–53, 1089
212–14, 216, 307, 944–45, 948	Harvard University, 47–48, 56, 984
preemption and, 379	Haskell, Edward, 103–4
separation of powers and, 158	Hastie, William, 1089, 1090
sovereign immunity and, 788	Hawaii territorial courts, 879
Hamilton, Walton H., 24, 63, 64, 65, 66, 267,	Hawkins, Alfred, 616, 621, 623, 625
310, 415–16, 469, 762, 980–81, 1142,	Hawley, Ellis, 942, 967, 968, 976, 981, 983-84
1143, 1144, 1145	Hayes, Johnson Jay, 929-30
Hamilton case	Hays, Arthur Garfield, 825, 1066
balancing in, 742	Health and safety, police power and, 41–42
briefs in Supreme Court, 740-42	Healy, Michael, 822
compulsory military training and, 740	Heffernan, Joseph, 163
concurring opinion in, 743-44	Heher, Harry, 606
Due Process Clause and, 741-42, 743	Heiliger, Percy, 833
factual background, 740	Heineman, Ben W., 994
liberty and, 741-42, 743	Heiner, William, 61–62
majority opinion in, 742-43	Heinz, Howard, 1012
Privileges and Immunities Clause and, 743	Heinz Employees Association, 1012–13
reaction to, 744	Heller, Francis H., 1140
students' strategy in, 740-41	Heller, Joseph, 191, 193, 194, 196
unconstitutional conditions in, 743	Hellman, Lillian, 1061
university strategy in, 741-42	Henderson, Gerard C., 424
Hand, Augustus, 506, 872-73	Henretta, James, 15
Hand, Learned, 156, 230, 344, 345, 406,	Henry, Patrick, 163
563–64, 585, 608, 725, 731, 1002	Henry, Robert K., 363
Handbills	Herndon, Angelo, 4, 261, 551, 706–16, 1060
freedom of speech and, 1061-64	Herndon, C.C., 649
Jehovah's Witnesses and, 1061	Herndon case
police power and, 1062	Communist Party and, 707, 709, 712–13, 714
Hansberry, Carl, 804–6	context of, 715–16
Hansberry, Lorraine, 805	Court-packing plan and, 715
Hansen, Inger, 922	dissenting opinion in, 712
"Happy Hot Dogs," 319	factual background, 706-8
Harding, Warren	failure to raise issues at trial, 710-11
generally, 527	habeas corpus proceedings, 713-15
administrative agencies, presidential	incitement to insurrection and, 709, 710-11
interference with, 473	International Labor Defense in, 708, 707–8
Hughes and, 14	jurisdictional issues, 711-12
judges appointed by, 353, 520, 521, 571	"labor defense" in, 707–8, 712–13



INDEX

Herndon case (cont.) in Crowell v. Benson, 455 majority opinion in, 711-12 demonstrations, property-based analysis of, NAACP and, 713 1067, 1069 reaction to, 712, 715 diversity jurisdiction and, 861-63, 867, rehearing in state court, 710-11 868-69, 870, 872, 1161 rehearing in Supreme Court, 712-13 domicile for purposes of taxation and, 103 Double Jeopardy Clause and, 1052-53, 1054 state court appeals, 708-9 entrapment and, 589 trial, 708 Herring, E. Pendleton, 47-48, 518-19 estate tax and, 61 Higgins, John C., 976-77 formalism and, 103 High's Ice Cream, 1095 Fourteenth Amendment and, 235 Hill, Joe, 617-18 freedom of speech and, 563, 680-82, 684, Hill, Rebecca, 619 685, 715-16, 735, 1044, 1046, 1099 Hill, Samuel, 224 general federal common law and, 861-63, Hirsch, Sylvan, 1032 867, 868-69, 870, 872 Hiss, Alger, 527-28 "grandfather clauses" and, 657-58 Historiography of Hughes Court Hughes and, 17, 18, 29-30, 745 generally, 1146-47, 1163-64 ICC and, 90 classical-modern dichotomy, 1149-53 intergovernmental tax immunity and, 108 conservative-liberal dichotomy, 1146, on justices, 2-3 1147-48, 1163-64 labor law and, 1080 Legal Realism and, 38, 55 "Constitutional Revolution of 1937," 1158-63 (See also "Constitutional legal theory and, 55 Revolution of 1937") liberty and, 557 life of, 18-19 dichotomies, 1146, 1163-64 docket books and, 1157-58 lynching and, 614-15 externalist-internalist dichotomy, 1162-64 in Macintosh case, 734 formalist-realist dichotomy, 1146, 1149-53, on Marshall, 1137, 1138 1163-64 McReynolds and, 22 Hughes-Roberts visit and, 1154-57 minimum wage and, 231 narrow understanding of "switch in time," on moralism, 1044 National Motor Vehicle Theft Act and, 1153-54 new evidence regarding "switch in time," 580-81 naturalization and, 730, 733, 734, 736 1154-58 progressive-reactionary dichotomy, old age and, 258 1163-64 as Progressive, 19 "switch in time," 1153-58 (See also "Switch Prohibition and, 594 racial discrimination and, 1092 History of English Law (Holdsworth), 936 rate-making and, 446 Hitler, Adolf, 689, 716, 1124, 1126, 1129, removal of executive officials and, 478, 480 1130, 1132, 1143 rent control and, 123 retirement of, 29-30, 108 H.J. Heinz, 1012-13 Ho, Daniel, 308, 782 separation of powers and, 777 Hoeninger, Heinrich, 1020-21 Stone and, 27-28 on Swift v. Tyson, 861-63, 867, 868-69, 870 Hoeper, Albert, 61 Hoff, Derek S., 120, 135, 162 systematic legal theory and, 1152 Hogan, Frank J., 310, 1070, 1077 trucking industry, regulation of, 739 Holdsworth, William Searle, 936 unconstitutional conditions and, 737, Holland, H. Brian, 935, 936 738, 739 Hollins, Jess, 261 Van Devanter and, 19 Holm, Mike, 112 in "White Primary" cases, 650 Holmes, Oliver Wendell, Jr. wiretapping and, 585-86 Holmes, Oliver Wendell, Sr., 18 generally, 30, 41-42, 203, 746, 1135 "affected with a public interest" test and, 67, Holt, Andrew, 124-25 Home Building and Loan Association, 123-24 Home Insurance Company, 900 "arising under federal law" and, 829 as associate justice, 19 Home Owners' Loan Corporation, 399-400 on competition, 764 Hoosac Mills, 210, 211-12



INDEX

administrative law and, 53-55, 456, 462, Hoover, Herbert generally, 454, 533, 571, 581, 671, 710, 747,464, 469, 546 916, 948 on administrative state, 55, 89, 247-48, 459, administrative agencies, presidential 534-35 interference with, 473 in Alton Railroad case, 243-44 ambition of, 17 antitrust law and, 976, 980 antitrust law and, 975, 977-79, 980 austerity programs under, 157, 259 in Apex Hosiery case, 1033, 1035 Cardozo and, 30 criminal law and, 567 apportionment and, 113 federal salaries and, 120 in Ashwander case, 950-51 on Frazier-Lemke Act, 187 as associate justice, 14 George Otis Smith and, 113-14 attitudes of Administration toward, 250, 255, on government in energy industry, 258, 260 back pay and, 1004, 1005 944 - 45Hughes and, 14, 17 bank accounts, and taxation of, 362 Humphrey and, 481 bargaining units and, 1018 Black and, 315 Hutcheson and, 38 judges appointed by, 179, 210, 496, 579, in Blaisdell case, 127, 128-31, 134-36, 268 Brandeis and, 31, 745 653-54, 816, 990 on liquidationists, 941-42 in Brown v. Mississippi, 640-41 Norris-LaGuardia Act and, 1079, 1080 business regulation and, 89-90 Parker and, 28, 29 Butler and, 26 radio, regulation of, 88 in Butler case, 219 Reconstruction Finance Corporation and, in Cabinet, 14, 17 in Cantwell v. Connecticut, 1121–22 400-I Reed and, 317 Cardozo and, 16 Republican Party and, 27, 567 Carolene Products Footnote 4 Roberts and, 68 and, 414-15 Soviet Union and, 502 in Carter Coal Co. case, 226, 227, 229-30, Stone and, 27 306-7, 357, 1161 Taft and, 13 as centrist, 1147-48 trade associations and, 976 chain stores and, 957, 965 Hoover, J. Edgar, 27, 568-69, 584 changes during tenure as chief justice, 340 Hopkins, Harry, 209, 320, 474 civil liberties and civil rights and, 1141 Horizontal forum-shopping, 910 in Classic case, 663 Horsky, Charles, 527-28, 935, 995-96 coerced confessions and, 640-41, 647 Horton, James, Jr., 628, 629 in Coleman v. Miller, 797-798, 799, Horwitz, Morton, 39, 369, 1149, 1151 "Hot oil" company unions and, 1007-8 antitrust law and, 982 on "conceptions of basic needs," 1152 Connally Hot Oil Act, 921-22, 927 at Conference, 335, 339 FDR on, 178, 179-80, 186 confirmation as chief justice, 14-15, 68 NIRA provisions, 178, 181, 182 congratulatory letters and, 333 on consensus, 333-34 NRA and, 178 Panama Refining case (See Panama Refining constitutional interpretation and, 218, 1138 "Constitutional Revolution of 1937" and, case) Hours of work, special treatment and, 42 1159 Housing segregation, police power and, 555–56 Coolidge and, 14 Houston, Charles Hamilton, 666-68, 669 corporate income tax and, 368 Howard Law School, 666, 1089, 1091-92 Court-packing plan and, 257, 261-62, 295 Howland, Charles, 733 in Cox v. New Hampshire, 1123-25 Hoyt, Richard, 495 on criminal law, 569 $in \, \textit{Crowell v. Benson}, 451, 455, 456 – 59, 461,$ Huddleston, George, 620-21 Hudson, John, 706, 713 465, 466 debtor relief laws and, 135-36 Hughes, Charles Evans, Jr., 14, 833, 948 Hughes, Charles Evans, Sr. Declaratory Judgment Act and, 755 generally, 30 deference and, 384-85 additur and, 266 in De Jonge case and, 704-5



INDEX

leadership on Court, 31-32 Hughes, Charles Evans, Sr. (cont.) derivative actions, constitutional questions legal education of, 56 Legal Realism and, 39 and, 758, 759, 761 dissenting opinions and, 334-35 (See also legal theory and, 56 liberal shift of, 161, 258, 296 specific case) Dodge Lectures, 49 in Lovell v. City of Griffin, 1118-19 effective assistance of counsel and, 635 in Macintosh case, 734-35, 737, 746, entrapment and, 591-92 1129 in Erie Railroad Co. case, 867, 868, 871 on martial law, 116-17 Establishment Clause and, 78 McReynolds and, 26 estate tax and, 63, 364, 366 in Meadowmoor case, 1108 evaluation of, 745 minimum wage and, 272 in Fansteel case, 993, 996, 997-98, in Mitchell case, 675-76 modification of opinions and, 933 999-1001 FDR and, 17-18, 147, 1144 in Morgan cases, 534-35, 537-38, 539 federal jurisdiction and, 812 municipal bankruptcies and, 247 Federal Rules of Civil Procedure and, 890 Murphy and, 16 fire insurance companies, taxation of, on national power, 1142 naturalization and, 735, 737, 746 366-67 First Amendment, and reasonableness in Near v. Minnesota, 696, 697-98, 700, standard, 327 701-2 on foreign affairs, 501 in Nebbia case, 142, 1161 formalism and, 669, 1152 as New York Governor, 15, 16-17 formulas and, 3, 12-13, 37, 336, 525, 555, NLRA and, 524-25, 989, 1020-22 NLRB and, 1005, 1008, 1009 1151, 1152 formulas versus "conceptions of basic nomination as chief justice, 14, 28, 340 needs," 57-63, 136 nondelegation doctrine and, 359 "Four Horsemen," voting with, 248 in Norris v. Alabama, 630-31 Frankfurter and, 56, 320, 333 opposition to, 14-15 freedom of speech and, 704-5, 1044, in Panama Refining case, 181-83, 184-85 as part of "Old Court," 369 1077-78 gasoline tax and, 376 in Patterson v. Alabama, 632-33, 840-41 personal description of, 15-16 in Gobitis case, 1133 in Gold Clause cases, 147-48, 150-51, personality of, 17-18 152-54, 155, 264, 267, 407 personalization of law and, 419-20 as Governor, 456, 463 political assessment of, 161-62, 165 in Hague v. CIO, 1072 post-Erie cases, scope of review in, 881 Harding and, 14 as presidential candidate, 14, 17 Holmes and, 17, 18, 29-30, 745 prior restraint and, 696, 697-98, 700, 701-2 Hoover and, 14, 17 in private practice, 751 in Hutcheson case, 1038, 1040 private schools, and state assistance to, 717 as Progressive, 610, 613, 1046, 1152 ICC and, 91 independent state grounds and, 842 Prohibition and, 602, 605 public duty and, 16-17 in rem proceedings and, 506 integrity of, 16 public utility holding companies and, 974 inter-chambers materials and, xiv public utility rates and, 325 intergovernmental tax immunity and, 106, race and, 613-14 264, 400 Railway Labor Act and, 271 interstate transportation and, 355 rate-making and, 384-85, 447, 448 recusals of, 833 Jackson and, 15 in Jones & Laughlin case, 283-86, 287, 305, red flag display and, 688 306, 309 Republican Party and, 14, 613 on judicial review, 43 restrictive covenants, class actions and, on judicial salaries, 159 808, 811 retirement of, 675, 1141, 1144-45 jury trials and, 569, 575-77 labor law and, 393-94, 417, 989, 1041 Roberts and, 16, 1154-57 labor picketing and, 1084, 1108, 1111 in St. Joseph Stock Yards case, 522-24, 526 law clerks and, 338 sales and use taxes and, 372, 373-74



INDEX

in Schechter case, 196–98, 304, 305, 306,	ICC. See Interstate Commerce
309, 440, 1152	Commission (ICC)
school segregation and, 668-69	Ickes, Harold, 178, 179, 180-81, 186, 526,
scope of review and, 525	772–73
as secretary of state, 587	Idaho
severance tax and, 717	electricity generation, excise taxes on, 101
sit-down strikes and, 993, 996, 997–98,	martial law in, 117
	ILD. See International Labor Defense (ILD)
999–1001	Illinois
sovereign immunity and, 788–90, 794	
on stare decisis, 332	diversity jurisdiction and, 751
state immunity and, 262	estate tax in, 103
state income tax exemptions and, 202–3	Fansteel case (See Fansteel case)
statutory interpretation by, 84, 85–86, 163,	filled milk in, 411
921–22, 931	judicial sales in, 122
Stone and, 31, 745	labor picketing in, 1102–12 (See also
Supreme Court Building and, 12, 332	Meadowmoor case)
on Swift v. Tyson, 864	physical examinations in, 891, 894–95
"switch in time" and, 4, 296, 299–301,	price regulation in, 63
303-7, 308, 309-10, 1153, 1154, 1158	restrictive covenants in, 806–7
synthetic reasoning and, 1160-61	Illinois, University of, 690, 727–28
Taft and, 16, 32	Immigration Act of 1917, 915–16
Tenth Amendment and, 356	Immigration law
textualism and, 1115	deportation of citizens, 450-51, 466-67, 468
Theodore Roosevelt and, 14	preemption and, 379–81
in <i>Tipaldo</i> case, 234–35, 236, 309	statutory interpretation and, 915–16, 918–19,
tobacco industry regulation and, 349	923–24
trucking industry, regulation of, 96, 97–98,	Impairment of contracts. See Contracts Clause
99–100, 101	Income tax
Van Devanter and, 20	generally, xiv
venue and, 847	corporate earnings, 368–69
wealth of, 120	deduction for dividends, 363–64
in West Coast Hotel v. Parrish, 273–75, 292,	dividends, 368–69
1142	Equal Protection Clause and, 202–5, 363–64
in "White Primary" cases, 652, 656	gross income tax, Dormant Commerce
workers' compensation and, 456	Clause and, 374–75
writing style of, 14	judicial salaries, federal income tax and,
Hughes, Langston, 677	402–3
Hull, Cordell, 495	Privileges and Immunities Clause and, 202,
	•
Humphrey, William, 5, 247, 302, 480–86	203, 204–5
•	retroactive application of, 364
Hunt, Charles W., 482	state income tax exemptions, 202–5, 363–64
Hurn, Philip, 825	Incorporation
Husty, Richard, 601	Double Jeopardy Clause, 1052, 1053–55
Hutcheson, Joseph, 38–39	Due Process Clause, 741–42
Hutcheson, William, 1036–37	Establishment Clause, 78–79, 717
Hutcheson case	federalism and, 1056
briefs in Supreme Court, 1037–38	Fifth Amendment, 639
Clayton Act and, 1038–40	freedom of press, 719, 720
defense strategy in, 1038	freedom of speech, 1055
dissenting opinion in, 1038, 1040	Free Exercise Clause, 740
factual background, 1036-37	"line of division" regarding, 1055–56
government strategy in, 1037	mechanism of, Due Process Clause as,
indictment in, 1037	1050–51
majority opinion in, 1038-40	religious freedom, 741
Norris-LaGuardia Act and, 1038-40	self-incrimination privilege, 639
reaction to, 1041	Independent judgment test, 520–21, 522–24
Sherman Antitrust Act and, 1036–41	Independent state grounds
Hyde, Arthur, 520	generally, 830–31, 842



INDEX

Independent state grounds (cont.)	patents, choice of law and, 910-13
arbitration and, 832-34	specialized federal common law and, 877-78
Contracts Clause and, 835–39	"Intelligible principle" in administrative law,
federalism issues, 832	436, 437–38, 439, 497–99
intergovernmental tax immunity and,	Inter-chambers materials, xiv
839–40	Intercurrence, 5, 7
sales and use taxes and, 840-42	Interest group pluralism
Sherman Antitrust Act and, 832–33	generally, 2, 4
tenure of teachers and, 835-39	administrative law and, 518-19, 549-50
Indiana	administrative state and, 542
chain stores in, 957–60	American Farm Bureau Federation and, 352
physical examinations in, 891	Bentley on, 2, 45-46
public utility rates in, 325	Carolene Products Footnote 4 and, 414, 984,
Teacher Tenure Law, 835–39	1058, 1059
Indiana Law Journal, 959	Chamberlain on, 48
Indictment	civil liberties and civil rights and, 1113-14
information versus, statutory interpretation	class legislation and, 268-69
and, 919–20	Dickinson on, 46
requirement, 1053, 1055	economic regulation, emergence in, 984-85
"Indirect curtailment," 1041	Erie Railroad Co. case and, 909
Individualism	FDR and, 313, 1045-46
conservatives and, 553-54	First Amendment and, 47
Progressivism and, 558, 560-61	formalism and, 417
Industrial Workers of the World, 617	freedom of speech and, 1078
Injunctions	Hale on, 655–56
Anti-Injunction Act, 849	Herring on, 47–48, 518–19
bargaining units and, 1015–16	as institutional "revolution," 1143
in Hague v. CIO, 1066, 1069-70	Jaffe on, 46–47
labor picketing and, 1082–83, 1084–88,	labor law and, 417
1103, 1104, 1105, 1108, 1109–10	labor picketing and, 1099-100, 1113-14
in Near v. Minnesota, 691, 693, 699	Laski on, 46
in New Negro Alliance case, 1090	law, emerging recognition in, 416–18
Norris-LaGuardia Act, under, 1082–83,	Llewellyn on, 47
1084–88	at mid-decade, 269
prior restraint and, 691, 693, 699	milk industry regulation and, 351-52
Tax Injunction Act of 1937, 383,	New Deal and, 416–17
755–56	NLRA and, 416, 1045–46
Inquisition, 640	NRA and, 416
In rem proceedings, 506	politics, emerging recognition in, 416–18
Insanity defense, 1047	private law and, 46–47
Insull, Samuel, 971–72	Public Utility Holding Company Act
Insurance	and, 974
"affected with a public interest" test and,	race and, 804
68–70	religious freedom and, 1123, 1133
automobile insurance, common law and, 875	right to organize and, 655
commercial insurance, choice of law and,	Social Security Act and, 416
899–901	"switch in time" and, 310
Declaratory Judgment Act and, 755	Thornhill v. Alabama and, 1099–100
disability insurance, common law and, 876	tobacco industry regulation and, 351–52
incontestability clauses, 878–79	transformation of Progressivism into,
rates of agents, 68–70, 745–46	408, 414, 415–16, 984, 1046, 1058,
taxation of insurance companies, Equal	1059
Protection Clause and, 366–68	"White Primary" cases and, 653
unemployment insurance (See	"Interests," 7, 43–45, 1045
Unemployment insurance)	Intergovernmental tax immunity
Intangible property, estate tax and, 365–66	generally, 389
Intellectual property	Congressional intent, based on, 106
copyright law (See Copyright law)	Equal Protection Clause and, 264



INDEX

federal agency immunity from suit, 400-1 federalism and, 396, 400 federal taxation of state employees, 397-99 formalism and, 263, 264 formulas and, 263-64, 403 formulas versus "conceptions of basic needs," 105-8 independent state grounds and, 839-40 judges, federal income tax and, 402-3 political economy, based on, 105-6 public versus private sector, 403 reciprocity and, 396 sovereignty, based on, 106 state taxation of federal employees, 399-400 Interior Department, 178, 179 Internalist-externalist dichotomy, 2, 4, 1159-60, 1162-64 International Association of Machinists, 1023, International Boxing Club, 805 International Brotherhood of Electrical Workers (IBEW), 390-91, 524, 1007-9 International Brotherhood of Teamsters, 1036, International Court of Justice, 886 International Juridical Association, 1032-33, International Labor Defense (ILD) in De Jonge case, 703 in Hague v. CIO, 1071 in Herndon case, 708, 707-8 in Norris v. Alabama, 630, 634 in Patterson v. Alabama, 629, 630, 634 in Powell v. Alabama, 621, 624, 627–28 in Scottsboro cases, 616-17, 618, 619-21, 628, 634 International Longshoremen and Warehousemen's Union (ILWU), 1014-15 International Longshoremen's Association (ILA), 1014-15 Interpleader, 331 Interstate commerce. See also Commerce coal mining not deemed to be, 1029-30 direct versus indirect effects on, 1029-30 domicile for purposes of taxation and, 102-5 effect of local regulation on, 343-45 electricity generation as, 101-2 formulas versus "conceptions of basic needs" and, 101-5 "instrumentalities" of, 277-78 labor not deemed to be, 1029 local milk price regulation, effect of, 346-47 manufacturing versus, 101-2, 172-73, 194-95, 228, 281, 284-86, 287, 305, 306, 342 mining versus, 194, 228, 342

practical determination of, 101-2 price regulation, effect of, 343-45 prison-made goods in, 220-21 production versus, 102, 169, 193, 194-95, 205, 216–17, 228, 286, 305–6, 307, 350, 353 public utilities and, 1009 sit-down strikes and, 1035 state regulation of local activities and, 101, 102, 381-82 state taxation and, 264 stockyards and, 348 strikes, effect of, 283, 394, 395, 1029-30, 1035 "throat of commerce" doctrine, 348, 352 tobacco industry and, 347-51 voluntary interstate milk price agreements, effect of, 346-47 Interstate Commerce Act generally, 44 enforcement of, 1021 Mitchell case and, 671-72, 673, 674, 675, 676 railroad length limits and, 791-92 Interstate Commerce Commission (ICC) generally, 87, 472 administrative procedure in, 516-17 administrative state and, 434 courts and, 542 creation of, 101 discrimination by, 676 Due Process Clause and, 93 extension of lines and, 93-95 First Amendment and, 441 formulas versus "conceptions of basic needs," 90-95 Frankfurter and, 514 as "gold standard" for administrative agencies, 514 Logan-Walter Bill and, 544 Mitchell case and, 670, 671-72, 673, 674, 675 nondelegation doctrine and, 177, 182 preemption and, 378-79 presidential interference with, 472-73 private industry rules versus, 92-93 problems with, 425-26, 428 Progressive vision of, 424–28 railroad rates and, 91, 816 rate-making, 434, 437, 439, 441, 442, 520 removal of executive officials from, 485, 488 separation of powers and, 176, 184, 436 short lines, regulation of, 92 special interests and, 518-19 as specialized agency, 439 standing and, 764-68 trucking industry and, 378-79 "two days free" rule and, 92-93



INDEX

Interstate transportation Fair Labor Standards Act and, 352–56	James Barr Ames Prize, 424 Jamison, Bert, 690
minimum wage and, 352–56	Japan, invasion of Manchuria, 744
police power and, 352	J.C. Penney Co., 368, 960
Tenth Amendment and, 353-54, 355-56	Jefferson, Thomas, 379, 1129
Iowa	Jehovah's Witnesses
bank accounts, taxation of, 793	Cantwell v. Connecticut (See Cantwell v.
diversity jurisdiction and, 858	Connecticut)
"farm holidays" in, 120–21	civil liberties and civil rights and, 1141
martial law in, 117	Cox v. New Hampshire (See Cox v. New
sale and use tax in, 373-74	Hampshire)
Irgun Zvai Leumi, 1085–86	flag salute and, 1126 (See also Gobitis case)
Iron, Blood, and Profits (Seldes), 493	founding of, 1116
Irons, Peter, 4, 174, 209	in Germany, 1126, 1129
Italy	Gobitis case (See Gobitis case)
as administrative state, 517	handbills and, 1061
compulsory loyalty in, 1132	Lovell v. City of Griffin (See Lovell v. City of
dangers of populism compared to fascism	Griffin)
in, 716	permit requirements and, 1116–17
due process protection, effect of threat of	proselytizing by, 1116–17
fascism on, 610, 645	Jessup, Philip, 886
FDR on, 508–9	Jews
Frankfurter on, 52	anti-Semitism and, 22, 701-2
freedom of speech, effect of threat of fascism	poultry industry, kosher rules in, 192-93
on, 1095	"Jobbists," 2–3
Neutrality Acts and, 494	Johns Hopkins University, 984
tolerance, effect of threat of fascism on, 1126	Johnson, Andrew, 253, 479
It Can't Happen Here (Lewis), 716	Johnson, Hiram, 163
77	Johnson, Hugh, 170-72, 173, 181, 186
Jackson, Lafayette, 957-58	Johnson, Jack, 82
Jackson, Robert	Johnson, Joel S., 607
antitrust law and, 968, 980, 981-82	Johnson, Raymon T., 745
chain stores and, 954	Johnson, Sveinbjorn, 728, 742
choice of law and, 905, 909	Johnson Act of 1934, 383
coal mining industry and, 223	Johnston, A. Hall, 590
Court-packing plan and, 257	Jones, Day, Cockley & Reavis (law firm), 1002
"destroyers-for-bases" deal and, 509-10	Jones, J. Edward, 525–32
Erie Railroad Co. case and, 872	Jones, Jesse, 317–18
Fansteel case and, 995–96, 997	Jones, M. Ashby, 736
Frankfurter and, 320	Jones, Norman L., 807
Gold Clause cases and, 148, 150, 405	Jones, W.I., 179
Hughes and, 15	Jones & Laughlin case
intergovernmental tax immunity and, 399	briefs in Supreme Court, 280-82
in Justice Department, 968, 973, 980, 1085	Commerce Clause and, 281–82, 284–86,
labor law and, 392-93, 1008	306, 355
Morgan cases and, 535, 538, 539	company strategy in, 281-82
public utility holding companies and, 973	"Constitutional Revolution of 1937" and,
removal of executive officials and, 487	1153
as solicitor general, 935, 995–96, 997, 1008	dissenting opinion in, 286-87
standing and, 774–75	factual background, 278
"switch in time" and, 297	formulas in, 305
tobacco industry regulation and, 349	formulas versus practical realities in, 287
wiretapping and, 584, 587	government strategy in, 280-81
Jackson Clarion-Ledger, 641	lower court proceedings, 279
Jacksonians, 40–41, 43, 853–54	majority opinion in, 283-86
Jaegerman, Edgar C., 827	national power in, 342–43
Jaffe, Louis L., 46–47, 466–67, 469, 1112,	NLRA, upholding of, 283–86
1113	in NLRB, 278–79



INDEX

oral arguments in Supreme Court, 282–83 "preventive power" argument in, 280, 281–82	jurisdictional amount (See Jurisdictional amount)
severability and, 281	limiting jurisdiction of Court as potential Administration strategy, 252
"stream of commerce" argument in, 280,	Norris-LaGuardia Act and, 383
281, 286–87, 1160	Jurisdictional amount
"switch in time" and, 297, 300, 1154, 1155	automobile caravans and, 823–24
unfair labor practices in, 279, 285	Federal Rules of Civil Procedure and, 823
Jones & Laughlin Steel Company, 278–79,	freedom of speech and, 812, 814
287, 305, 306, 417	license fees and, 821–23
Jones v. SEC	property rights and, 814
authority of SEC, 528–29	Jurisdictional facts, 443–44, 450–51, 453–54,
briefs in Supreme Court, 527–28	457–58, 461, 469
defense strategy in, 527	Jury trials
dissenting opinion in, 530	African Americans, exclusion from juries,
factual background, 525–27	261, 622, 624, 628–29, 630–31
formalism in, 530–31	changing circumstances and, 266
government strategy in, 527–28	civil service and, 577
lower court proceedings, 527	federal employees, exclusion from juries,
majority opinion in, 528-29	573-77
reaction to, 531-32	government structure and, 111
registration statements, withdrawal of,	jury views, right of defendant to be present
527–28, 529, 530, 531	at, 1047–51
subsequent criminal prosecution, 532	petty offenses, 570-72
Joseph, Robert T., 976	Seventh Amendment and, 266, 572
Judicial restraint, Black on, 777	Sixth Amendment and, 570, 572,
Judicial review	573-75, 576
administrative law and, 428, 429–30, 435,	substantive due process and, 572
464–65, 543 (See also Administrative law)	Justice Department
administrative state and, 89, 443	generally, 301
conservatives and, 552	Agricultural Adjustment Act and, 209
Gobitis case and, 1138 Hughes on, 43	Antitrust Division, 481, 948, 968, 980, 982
independent judgment test, 520–21, 522–24	antitrust law and, 968, 976, 979
liberals on, 552	Civil Liberties Unit, 659, 1076, 1142
scope of review, 520–25	Civil Rights Section, 659–60
"substantial evidence" standard, 520–21,	Claims Division, 935
522, 523–24	embargoes and, 495
Judicial salaries	J. Edward Jones and, 532
Article I versus Article III judges, 157–60	Panama Refining case and, 179–80
austerity programs and, 157–60	public utility holding companies and, 973
in Court of Claims, 159-60	voter fraud and, 659-60
in District of Columbia, 158-59	wiretapping and, 583
federal income tax and, 402-3	Justiciability
judicial independence and, 161	abstention (See Abstention)
separation of powers and, 158	Child Labor Amendment (proposed), 796,
in South Africa, 402	798, 801 (See also Child Labor
Judicial sales, Contracts Clause and, 122	Amendment (proposed))
Judicial time, 4–7	Declaratory Judgment Act (See Declaratory
doctrinal time and, 6–7	Judgment Act)
life tenure of justices and, 6	deference versus nonjusticiability, 749
Judiciary Act of 1789, 831, 853, 930	derivative actions, constitutional questions
Judiciary Act of 1925, 339, 831–32, 843,	and, 757–62 diversity jurisdiction (<i>See</i> Diversity
913–14, 1022 Jurisdiction	jurisdiction)
diversity jurisdiction (See Diversity	federal jurisdiction (<i>See</i> Federal jurisdiction)
jurisdiction)	general federal common law (See General
federal jurisdiction (<i>See</i> Federal jurisdiction)	federal common law)
	′



INDEX

Justiciability (cont.) Kirkland & Ellis (law firm), 690 Klarman, Michael J., 634, 646 ripeness, Carter Coal Co. case and, 230 Klauder, George, 606-7 standing (See Standing) Juvenile courts, 434, 513 Klaxon Company, 910-11 Kleiman, Isaac, 806 Knaebel, Ernest, 1072 Kagle, Samuel, 606-7 Kalinin, Mikhail, 502-3 Knight, Jack, 5 Kalman, Laura, 1162-63, 1164 Knight, Thomas E., Jr., 622, 625, 628, 629 Kalodner, Harry, 1129 Knight, Thomas E., Sr., 622-24, 625 Kalven, Harry, 811 Knollenberg, Fred, 649, 650 Knowles, Helen, 272 Kansas "affected with a public interest" test in, 66 Knowlton, J.H., 404, 405 Child Labor Amendment (proposed) and Knudsen, Joe, 451-52 (See Child Labor Amendment (proposed)) Krauthoff, Edwin, 188 Coleman v. Miller (See Coleman v. Miller) Krock, Arthur, 150, 185-86, 227, 249, 299, Native Americans, taxation of, 884-85 321, 531, 872, 1000 Ku Klux Klan trucking industry, regulation of, 99 Kansas City Call, 669-70 Black in, 314, 316-17, 340, 644, 645-46 Kansas City Southern Railroad, 767 Butler and, 26 Kaplan, Benjamin, 1066-67, 1070 Catholic schools and, 557 Katz, Harry, 607-8 Katz, Isadore, 1032-33 "Labor defense" Kaufman, Andrew, 128, 1057 generally, 610-11 Kearney, Thomas, 1051 appeals and, 618 civil libertarians and, 619 Keindl, Theodore, 865-66, 870 Keith, Jarius, 855-56 Communists and, 617 Kellogg-Briand Pact, 726, 727, 730, 741 in De Jonge case, 703 Kennedy, David, 208, 1004 frame-ups and, 617-18 Kennedy, Duncan, 308, 309, 1149, 1151-52, in Herndon case, 707-8, 712-13 1161-62 "legal lynchings" and, 618-19 in Norris v. Alabama, 634 Kennedy, John F., 760 Kennedy, Joseph, 150, 321, 526, 532 in Patterson v. Alabama, 629, 634 Kennerly, Thomas, 653-54, 655 in Powell v. Alabama, 624, 627-28 Kennison, Frank, 1124-25 in Scottsboro cases, 617-19, 628, 634, 677 Kentucky "strategic litigation" versus, 677-78 bank accounts, taxation of, 361-62 Labor Department conciliators, 1024 Carter Coal Co. case (See Carter Coal Co. deportation and, 450 chain stores in, 962 naturalization and, 729, 731 diversity jurisdiction and, 859-60 prevailing wages and, 773-74, 775-76, 777 housing segregation in, 555 Wage and Hour Division, 544 martial law in, 117 Labor law Radford case (See Radford case) Apex Hosiery case (See Apex Hosiery case) Kepner, Thomas, 1052-53 back pay, authority of NLRB to award, 1001-5 Kersch, Ken, 417 bargaining units (See Bargaining units) Kessler, Jeremy K., 1070 boycotts, federal jurisdiction and, 828 Keynes, John Maynard, 368, 943-44 child labor, Commerce Clause and, 795 Keyserling, Leon, 276 collective bargaining (See Collective Kidnapping, statutory interpretation and, 919 bargaining) Kidwell, Sherman, 924-25 Commerce Clause and, 392, 393-96 Kiefer & Kiefer, 401 company unions (See Company unions) demonstrations, freedom of speech and, Kiley, James, 1046-47 Kinder, Eugene T., 1097 812-14 King, Carol Weiss, 710, 1031 Fansteel case (See Fansteel case) Kinley, David, 727-28 First Amendment and, 1038, 1039 Kirkendall, Richard, 352 freedom of speech and, 812-14 Hague v. CIO (See Hague v. CIO) Kirkland, Weymouth, 690, 693–95, 696-98, 701 Hutcheson case (See Hutcheson case)

I 204



INDEX

interest group pluralism and, 417 labor picketing (See Labor picketing) Legal Realism and, 392 maturation of, 1041 minimum wage (See Minimum wage) Near v. Minnesota and, 701 NLRA (See National Labor Relations Act (NLRA)) NLRB (See National Labor Relations Board (NLRB)) Norris-LaGuardia Act (See Norris-LaGuardia Act of 1932) prior restraint and, 701 replacement workers (See Replacement workers) right to organize, 276 self-organization, right of, 1008-9 sit-down strikes (See Sit-down strikes) strikes (See Strikes) unfair labor practices (See Unfair labor practices) unions (See Unions) Labor picketing African Americans, picketing by as labor picketing, 1088-95 ALCU and, 1031, 1065, 1082 Carolene Products Footnote 4 and, 1057, 1097, 1109, 1111 Clayton Act and, 1079 at common law, 1078-79, 1103, 1104 as fundamental right, 1109 incidental impact on freedom of speech, 1098 injunctions and, 1082-83, 1084-88, 1103, 1104, 1105, 1108, 1109-10 interest group pluralism and, 1099-100, 1113-14 intimidation or coercion and, 1096-97, 1098 "labor dispute" construed, 1084-88, 1090-91, 1092 libel and, 1080, 1110-12 Meadowmoor case (See Meadowmoor case) New Negro Alliance case (See New Negro Alliance case) Norris-LaGuardia Act and, 823 peaceful picketing, 1083 politics of, 1112-14 property-based analysis of, 1100 right to pursue occupation and, 1083-84 sit-down strikes compared, 999-1000 as speech, 1084, 1096, 1097-98, 1104-5, 1108-10 by "strangers," 1100 Thornhill v. Alabama (See Thornhill v. violence and, 1080, 1101-4, 1105-7, 1108, wages and hours (See Wages and hours)

Lacey, A.J., 579 Lacey, Elizabeth, 131 Laches in post-Erie cases, 882–83 La Coss, Louis, 669 La Follette, Robert, 45, 483, 745, 1045 Lafontant, Jewel Stradford, 805 La Franca, Anthony, 593–94 "Lagging indicator," Supreme Court as, xiii Lake Charles American-Press, 718 Lamfrom, Leon, 1081-83 Landis, James, 49-51, 87, 89, 302, 320, 429-30, 436, 440, 442, 443, 444, 467-69, 473, 488, 515–16, 517, 528, 531–32, 542, 546, 930, 1040 Landon, Alf, 235-36 Lane, Harry, 475-76 Lane, I.W., 657 Langdell, Christopher Columbus, 1151 Langum, David, 83 Lanzetti, Ignatius, 605-6 La Plata River and Cherry Creek Ditch Company, 885 La Prade, Arthur T., 792 Larson, Arthur, 464 Laski, Harold, 46, 319, 320, 321 Latimer, Thomas, 692-93 Law clerks, 337-39. See also specific individual Lawless, Edward, 930 Lawrence, S.B., 104-5 Law schools, segregation in, 667 Lawson, Belford, 1088-89, 1090, 1091-92 Lawson, Thomas, 1096-97 Lazarus, Richard, 337 Leader, William, 1031 League of Nations, 25, 493, 494, 495, 501 Lee, Anna, 805 Lee, Evan Tsen, 749 Lee, William F., 671, 672 Lee Sportswear Company, 394 Lefkowitz, Daniel, 598
"Legal lynchings," 618–19, 638, 641 Legal Realism generally, xiii, 37-38 administrative law and, 467, 510, 525 Brandeis and, 24, 525 briefs and, 934-35, 937 bureaucratic appointments and, 115 Cardozo and, 56 choice of law and, 897-98 civil liberties and civil rights and, 564 competition and, 764 "Constitutional Revolution of 1937" and, Dormant Commerce Clause and, 371 federal jurisdiction and, 749-50, 783 formalism, move away from, 934



INDEX

Legal Realism (cont.)	Lewis, Sinclair, 716
formalist-realist dichotomy, 2, 3, 934, 1146,	Liberalism
1149–53, 1163–64	African Americans and, 613, 619
formulas and, 392	antitrust law and, 1041
Frankfurter and, 369, 932	Butler, liberal views of, 26
Holmes and, 38, 55	civil liberties and civil rights and, 745
Hughes and, 39	Communist Party on, 713
Hutcheson and, 38–39	conservatism compared, 564
as judicial style rather than judicial	conservative-liberal dichotomy, 2-3, 1146,
reasoning, 934–35, 937	1147–48, 1163–64
labor law and, 392	convergence with conservatism regarding
modification of opinions and, 933-34	civil liberties and civil rights, 564
private law and, 39-40	Court-packing plan and, 256
Progressivism versus, 39–40	Douglas as liberal, 323
on recharacterization, 1034–35	economic regulation versus civil liberties
standing and, 763	and civil rights, 746
statutory interpretation and, 932-34	Free Exercise Clause, liberals and, 728
Stone and, 39, 55–56, 365	Hughes, liberal shift of, 161, 258, 296
as style, 934–35	Hughes Court generally, 165
vested rights and, 76, 77	interest group pluralism (See Interest group
Legal theory	pluralism)
Cardozo and, 33–36, 55	judicial review and, 552
"degree" and, 33, 39	national power and, 1043, 1044
formulas in, 32–33, 35–36, 37	police power and, 696
Frankfurter and, 55, 56	populism and, 716
Holmes and, 55	Progressivism versus, 408
Hughes and, 56	Roberts, liberal shift of, 296, 308, 957
interest group pluralism (See Interest group	Scottsboro cases and, 633, 639
pluralism)	Stone, liberal shift of, 28, 414
Legal Realism (See Legal Realism)	"switch in time" and, 296–97
"mass of particulars" and, 34	Libertarianism, 48, 552, 556–57, 655, 1044
practice versus, 53–56	Liberty
public interest versus special interest (See	compulsory military training and,
Public interest versus special interest)	741–42, 743
sociology in, 34, 36	conservatives and, 553-54
stare decisis in, 36–37	contracts (See Freedom of contract)
Stone and, 56	Fourteenth Amendment and, 556
Sutherland and, 56	Gobitis case and, 1129, 1132, 1133–34,
systematic legal theory, 1152	1138, 1139
Van Devanter and, 56	Hamilton case and, 741–42, 743
Legislative courts, 748	property rights versus, 1134–35
Legislative history, 915	schoolteachers, 557
Lehman, Herbert, 346, 1141	"White Primary" cases and, 655
Lehman, Irving, 1131	License fees
Leiserson, William, 514-15	class legislation and, 821-22
Lemann, Monte, 964, 1070	Ex Post Facto Clause and, 328
Lemke, William, 186–87, 188, 189, 293, 294	hawkers, 821–22
L'Enfant, Pierre, 11	jurisdictional amount and, 821-23
Lenin, V.I., 493	performances, 327–29
Lerner, Max, 1041	Licenses. See also Permits
Leuchtenburg, William E., 256, 300, 1154-55,	employment brokers, 362-63
1156–57, 1162	police power and, 382
Leventhal, Harold, 414, 587, 935	radio licenses, 549–50, 701, 778–80
Leveque, Pierre, 582	transportation agents, 381–82
Levitt, Albert, 935	travel agents, 32
Levy, Beryl H., 1140	Liebling, A.J., 1058
Lewcock, F.J., 787	Liebowitz, Samuel, 616, 628–30, 631, 633
Lewis, John L., 173, 1000, 1004–5	Life tenure of justices, 6



INDEX

Lilienthal, David, 945–46	defense strategy in, 1118
Limehouse, O.B. "Bossy," 79	factual background, 1117
Lincoln, Abraham, 17, 254, 400, 555, 627,	majority opinion in, 1118-19
1138	permit requirement and, 1117-19
Lincoln University, 667, 668–69	reaction to, 1119
Lindley, Ernest, 943	state appeal in, 1117–18
Lippmann, Walter, 156, 164, 186	trial in, 1117
Liquidationists, 941–42	unfettered discretion of municipality and,
"Little Norris-LaGuardia acts," 1080, 1081	1117–19
"Little Steel," 1001, 1004	Lovett, Archibald, 354
Litvinov, Maxim, 503	Lovett, Edward P., 1091–92
Litvinov Agreement, 503, 504–8	Lovett, T.S., Jr., 404
Llewellyn, Karl, 47, 162–63, 185, 564, 918–19	Low, Peter W., 607
Lockhart, William, 375	Lowell, A. Lawrence, 319
Loeb, William H., 634, 1096-97	Lowndes, Charles L.B., 63, 340, 350, 364,
Logan, Mills, 540, 543-45	965–66
Lonergan, Augustine, 187	Lubbell, Samuel, 222
Long, Huey	Lumbard, J. Edward, 497–99, 510
generally, 487	Lumber Industry Code, 174–75
assassination of, 716	Lundeen, Ernest, 163
farm bankruptcies and, 187	Lusky, Louis, 408, 410, 413–14, 415, 1057–58,
FDR and, 716	1059
freedom of press and, 700, 717-22	Lynching, 614–15
national power as defense against, 1142	Lyons, Ellis, 1000
politics of, 716	•
private schools, state assistance to, 78, 717	MacArthur, Douglas, 1060
property rights and, 1058	Macintosh, Douglas, 730-33
severance tax and, 717	Macintosh case
taxation of newspapers, 717–22	generally, 746
voter fraud and, 659	briefs in Supreme Court, 731–33
Longshoremen's and Harbor Workers'	conscientious objectors and, 730-37
Compensation Act, 451, 456	defense strategy in, 731, 732–33
Los Angeles Gas Company, 89–90	dissenting opinion in, 734–35
Louis, Joe, 805	factual background, 730-31
Louis K. Liggett Company, 957, 960	government strategy in, 732
Louisiana	lower court proceedings, 731
building and loan associations in, 136	majority opinion in, 733-34
chain stores in, 960, 964-65	naturalization and, 730-37
Child Labor Amendment (proposed)	reaction to, 735–37
and, 795	unconstitutional conditions in, 737-38
citizens, suits against own state by, 785-86	Mack, Julian, 980
Classic case (See Classic case)	Mackay Radio & Telegraph Company, 989-90
Democratic Party in, 662-63, 664, 665	Madden, John, 361
freedom of press in, 700	Madden, J. Warren, 282–83
insurance rates in, 70	Madison, James
martial law in, 117	class legislation and, 43
newspapers, taxation of, 717, 721, 722	General Welfare Clause and, 206-7, 208,
oil producers, taxation of, 717	210–11, 212, 944, 947, 948
politics in, 716	political economy and, 40-41
primary elections in, 659 (See also Classic	preemption and, 379
case)	removal of executive officials and, 476
private schools, state assistance to, 78, 717	sovereign immunity and, 788
Louisiana Progress, 717–18	Maine
Louisville & Nashville Railroad, 859	estate tax in, 103-4
Louisville Joint Stock Land Bank, 187–88	Swift v. Tyson (See Swift v. Tyson)
Lovell, Alma, 1116, 1117	Maire, Louis F., 642
Lovell v. City of Griffin	Majoritarianism, 559, 560-61, 562
briefs in Supreme Court, 1118	Manchuria, Japanese invasion of, 744



INDEX

Mandamus, standing and, 767-68 McMillan, Robert, 816 Mandlebaum, Samuel, 864-65 McReynolds, James Mann Act, 82-84, 922 generally, 1155 Manton, Martin, 25-26, 193, 504-5, 506, 507, "affected with a public interest" test and, 69 anti-Semitism of, 22 510, 527, 731 March, Charles A., 482 antitrust law and, 968, 977, 982 Margold, Nathan, 178, 666-67 in Apex Hosiery case, 1035 Maris, Albert, 1031, 1127-29 arbitrariness standard and, 264 Markham, James E., 696-98 in Ashwander case, 951 Marshall, James, 650-51 as associate justice, 22 Marshall, John, 32, 105-6, 127, 148, 499, 1137, Brandeis and, 22 in Butler case, 214 Marshall, Thurgood, 643-44, 666-67, 668, in Cantwell v. Connecticut, 1122 Cardozo and, 22 1091-92 Martial law in Carolene Products case, 412-13 formulas versus "conceptions of basic in Carter Coal Co. case, 225 needs," 115-17 chain stores and, 959, 964-65 government structure and, 115-17 in Coleman v. Miller, 798-99, 801, 802 Martin, R.V., 589 congratulatory letters and, 333 Maryland on consensus, 334 estate tax in, 58-59 corporate income tax and, 368 intergovernmental tax immunity and, 105 Court-packing plan and, 255 Maryland, University of, 667 on criminal law, 567 Mason, Alpheus Thomas, 27-28, 73, 164, 325 in Curtiss-Wright case, 500 "Mass of particulars," 34 deference and, 384-85 Massachusetts Democratic Party and, 21 advisory opinions in, 752 derivative actions, constitutional questions automobile insurance in, 844 and, 758, 759 Butler case (See Butler case) dissenting opinions and, 334-35 (See also demonstrations in, 1067 specific case) domicile for purposes of taxation and, 102-3 equitable estoppel in, 883-84 estate tax in, 103-4, 330-31 Douglas and, 22 flag salute in, 1126 entrapment and, 591 equitable estoppel and, 883-84 life insurance in, 23 minimum wage in, 231 in Erie Railroad Co. case, 867, 870 taxation of newspapers in, 720 estate tax and, 366 workers' compensation in, 907-8 federal jurisdiction and, 812 Massena, Roy, 1106 federal unemployment tax and, 291, 292 fire insurance companies, taxation of, The Masses (magazine), 438 Mathews, Clifton, 990 366-67 Mathews, George, 483, 484 gasoline tax and, 375-76 Maximum hours laws, 554-55 in Gold Clause cases, 147-48, 149, Mayfield, James, 1096 154-55, 407 McAdoo, William, 464 "grandfather clauses" and, 658 McAfee, James W., 1017 gross income tax and, 374 McBoyle, William, 579 in Hague v. CIO, 1072, 1076 McCarran, Pat, 320 Holmes and, 22 McClennen, Edward, 292-93 Hughes and, 26 McCormick, Robert, 689-90, 693-94, 700 interest group pluralism and, 144 intergovernmental tax immunity and, McCulloch, Edgar, 482 McGill, S.D., 643-44 108, 400 in Jones & Laughlin case, 283, 286-87, 305 McGirr, Lisa, 597 McGuire, James M., 540-41, 543-44 in Jones v. SEC, 527-28 McGurn, "Machine Gun" Jack, 82-84 jury trials and, 572 labor law and, 393, 394, 395, 396 McKenna, Joseph, 26, 861 McKinley, William, 623, 682 labor picketing and, 1087, 1111-12 McLaughlin, Charles, 774 law clerks and, 338 McMahon, Brien, 574 legal education of, 56



INDEX

life of, 21-22 union strategy in, 1104-5 violence and, 1101-4, 1105-7, 1108, 1110 in Lovell v. City of Griffin, 1118 modification of opinions and, 933 Meadowmoor Dairy, 1102-3 municipal bankruptcies and, 246 Medalie, George Z., 497-99, 510 Mediation Commission, 319 Native Americans, taxation of, 885 Mellon, Andrew, 941-42 in Nebbia case, 142, 143-45, 268-69 in New Negro Alliance case, 1093-94 Memphis Commercial Appeal, 641 Mennonites, 726 NLRA and, 306, 525 nondelegation doctrine and, 358-59 Meredith, Hubert, 674 "Mere evidence" rule, 599 personality of, 22 political assessment of, 165 Merriam, Charles, 488, 651 in Powell v. Alabama, 627, 1148 Methodist Episcopal Church, 727 price regulation and, 162 Meyer, Eugene, 916 Meyer, Robert, 556 prison-made goods in interstate commerce and, 220-21 Michigan Prohibition and, 599-601, 602-3 automobile searches and seizures in, 601 criminal syndicalism law in, 682-83, 684 public utility holding companies and, 974 race and, 22, 613-14 primary elections in, 660 rate-making and, 384-85, 448 sit-down strikes in, 988 red flag display and, 688 Michigan, University of, 24, 56, 156, 322-23, removal of executive officials and, 479-80 418, 425 Milgram, Morris, 1077 restrictive covenants, class actions and, 810 sales and use taxes and, 372, 373 Military in Schechter case, 196 compulsory military training (See school segregation and, 669 Compulsory military training) Social Security Act and, 292 draft, Free Exercise Clause and, 729 sovereign immunity and, 794 Reserve Officers Training Corps (ROTC), standing and, 769, 773 726–28, 740–41, 742 state income tax exemptions and, 363-64 Milk industry statutory interpretation by, 84, 915-17 Agricultural Adjustment Act and, 1101 "blended rate," 138–39 on substance versus procedure, 887–88 Supreme Court Building and, 11 Dormant Commerce Clause and, 410-12 "switch in time" and, 303 economics of, 138 Taft and, 22 excess production, 138-39 Theodore Roosevelt and, 21 filled milk, 410-12 in Thornhill v. Alabama, 1097 Great Depression, effect of, 139 trucking industry, regulation of, 96, 738, 739 interest group pluralism and, 351-52 TVA and, 952, 953 interest groups in, 139 unconstitutional conditions and, 738, 739 local price regulation, effect on interstate commerce, 343-45 venue and, 847 voter fraud and, 660-61 Meadowmoor case (See Meadowmoor case) in "White Primary" cases, 652-53, 655 "milk wars," 1100-2 Wilson and, 21-22 Nebbia case (See Nebbia case) wiretapping and, 586 nondelegation doctrine and, 358-59 Meadowmoor case price regulation in, 139-40, 343-45, 346-47 briefs in Supreme Court, 1104-6 (See also Nebbia case) company strategy in, 1106 substantive due process and, 412-13 dissenting opinions in, 1106, 1108-10 voluntary interstate price agreements, effect factual background, 1100-2 on interstate commerce, 346-47 findings of fact in, 1107, 1110 Milk Wagon Drivers' Union, 1102-3 injunctions and, 1103, 1104, 1105, 1108, Miller, Carroll, 672 Miller, Justin, 774, 935, 936 1109-10 labor picketing as speech, 1104-5, Miller, Nathan, 212 Miller, Robert I., 574, 575-76, 577 1108-10 majority opinion in, 1106-8 Mills, Ogden, 916 rehearing in, 1104-6 Minimum wage generally, 4 state court appeal in, 1103-4 Democratic Party and, 236 trial in, 1102-3



Index

Minimum wage (cont.)	Mitchell, Arthur, 670–71, 672, 675,
Due Process Clause and, 342	676, 1143
Fair Labor Standards Act and, 352-56,	Mitchell, Billy (Air Force), 726
359-60	Mitchell, William (attorney general), 13, 30,
historical background, 231-32	728, 742, 890, 891, 892–93, 979
interstate transportation and, 352–56	Mitchell case
nondelegation doctrine and, 359–60	briefs in Supreme Court, 672–75
"race to bottom" and, 352–53, 354, 355	Commerce Clause and, 673
Republican Party and, 235–36	defense strategy in, 672–73
Tipaldo case (See Tipaldo case)	demand, effect on unequal treatment, 675–76
value of services versus cost of living,	Dormant Commerce Clause and, 672–73
233–34	factual background, 670–71
West Coast Hotel v. Parrish (See West Coast	government strategy in, 673
Hotel v. Parrish)	ICC and, 670, 671–72, 673, 674, 675
Minneapolis Evening Tribune, 693	ICC brief in, 674
Minneapolis Morning Tribune, 691	Interstate Commerce Act and, 671–72, 673,
Minneapolis Tribune, 700–1	674, 675, 676
Minnesota	majority opinion in, 675–76
apportionment in, 112, 113	NAACP and, 671, 676
arbitration, independent state grounds and,	railroad brief in, 675
832–34	reaction to, 676
at-large elections in, 113	"separate but equal" and, 673
chain stores in, 840-41, 842	state briefs in, 673–74
declining income of farmers in, 120-21	state segregation law and, 672–74
Democratic Party in, 113	unjust discrimination and, 674, 675
Farmer-Labor Party, 112, 113, 121	Modern-classical dichotomy, 1146, 1149-53
"farm holidays" in, 120–21	Modern Democracies (Bryce), 652
foreclosures in, 120–21	Modification of opinions, 932–34
freedom of press in, 73	Moffat Tunnel League, 766
Mortgage Moratorium Act, 121–22, 123,	Mohler, John R., 535
125, 135 (See also Blaisdell case)	Moley, Raymond, 172
Near v. Minnesota (See Near v. Minnesota)	Mollison, Irvin C., 805
Public Nuisance Law, 690-91, 692-93	Monaco, sovereign immunity of states and,
Republican Party in, 112, 113	786–90
Minnesota, University of, 418	Montana, railroad rates in, 109-10
Minton, Sherman, 315	Montgomery, Olen, 616
Mississippi	Montgomery Ward, 964
"arising under federal law" and, 829	Moody, Dan, 650
Brown v. Mississippi (See Brown v.	Moody, Milo, 616, 622, 623, 624, 626, 627
Mississippi)	Moon, Henry Lee, 1094
coerced confessions in, 611–12	Mooney, Tom, 319, 320, 617–18, 624, 625
diversity jurisdiction and, 879-80	Moore, William, 1123, 1138–39
income tax in, 104–5	Morals, police power and, 42
insurance rates in, 70	Morgan cases
sovereign immunity and, 786–88	administrative state and, 538–39
Missouri	"bait and switch" in, 537, 538
consumer protection law in, 899	confusion regarding Court holdings in, 537
dumping of sewage water, common law	disposition of funds in, 539
injunction against, 876	factual background, 533-34
estate tax in, 103	fairness and, 536–37, 538
Gaines case (See Gaines case)	formality of decision-making process,
Hutcheson case (See Hutcheson case)	535–36, 537
labor organizing in, 1016–17	"full hearing" requirement, 533–35,
St. Joseph Stock Yards case (See St. Joseph	536–37, 538
Stock Yards case)	Morgenthau, Henry, Jr., 150, 320
Missouri, Kansas, and Texas Railway, 767	Mormons, 728–29
Missouri, University of, 667	Morrill Act of 1862, 217–18, 219, 727, 728
Missouri Pacific Railroad, 793	Morrison, John, 690, 691



INDEX

Morrison, Stanley, 403 on Gold Clause cases, 165 Mortgage Building and Loan Association, on Grosjean case, 722-23 on Hughes Court generally, 270 847-48 Moss, James A., 1129 on Mitchell case, 676 Motor Carrier Act of 1935, 378-79, 382 on Nebbia case, 161 "Mr. Smith Goes to Washington" (film), 1143 on NLRA, 1006 Mulford, James, 350 on restrictive covenants, 811-12 on Roberts, 258 Muller, A.B., 832 Munger, Charles, 859 on sit-down strikes, 1000 Munger, Thomas, 859 on "switch in time," 295 Municipal bankruptcies National Association for the Advancement of generally, 248 Colored People (NAACP) bankruptcy law and, 245-47 generally, 24, 178, 612, 804, 805 Contracts Clause and, 245-46, 247 Brown v. Mississippi and, 638, 639 Munitions industry, 493 Chambers v. Florida and, 642, 643-44 Murchison, Kenneth, 592-93 Classic case and, 666 Murdock, Harry, 923 "grandfather clauses" and, 657 Murphy, Edgar Gardner, 613 Herndon case and, 713 Mitchell case and, 671, 676 Murphy, Frank as attorney general, 323, 544, 659, 780, 1076 New Negro Alliance case and, 1089, 1094 in Cantwell v. Connecticut, 1122 Parker and, 28 Carolene Products Footnote 4 and, 1057 school segregation and, 666-67 civil liberties and civil rights and, 323 Scottsboro cases and, 615, 619, 620-21 in Classic case, 666 "strategic litigation" and, 611, 648 at Conference, 335 "White Primary" cases and, 649, 650 on consensus, 335 National Association of Cotton Federal Rules of Civil Procedure and, 894 Manufacturers, 212 National Association of Manufacturers. in Gobitis case, 1133-34 as Governor, 988, 993 244, 254 Hague v. CIO and, 1076 National Bank Act, 883-84 Hughes and, 16 National Bituminous Coal Commission, labor picketing and, 1106, 1108, 1111-12 356, 488 life of, 322-23 National Civic Federation, 425, 971 National Consumers' League, 296 in Meadowmoor case, 1106, 1108 nomination as associate justice, 323 National Industrial Recovery Act (NIRA) in Thornhill v. Alabama, 1095-96, generally, 126, 770 American Newspaper Publishers 1097-100, 1114 title to property and, 404 Association and, 722 Murphy, Walter, 321-22 antitrust law and, 975-76, 979, 980-81 Murray, George Welwood, 423 Blaisdell case and, 163 Mussolini, Benito, 52, 493, 689, 716, 1124, Brandeis on, 440 cartels and, 967 1132, 1143 Myers, Abram F., 833 Codes, 171, 173-74, 275-76, 358, 440 (See Myers, Frank, 475-76 also specific industry) Myers, Louis, 991 collective bargaining under, 172 competition and, 763-64 NAACP. See National Association for the court challenges, 174-76 Advancement of Colored People drafting of, 170–71, 186 (NAACP) emergency powers and, 303-4 Nardone, Frank, 582, 584, 587, 592 employee representation plans and, 390 Nathanson, J.J., 600-1 enforcement of, 173-74 Nathanson, Nathan, 1000 expiration of, 199, 309 FDR on, 170-71, 172, 173, 276, 313 The Nation Frankfurter on, 173 on American Liberty League, 169 "hot oil" provisions, 178, 181, 182 on Ashwander case, 760 invalidation of, 56, 165-66 on Brown v. Mississippi, 639, 641 on chain stores, 955-56, 957, 959 lack of specificity in, 439 on Frankfurter, 320 National Labor Board, 1006, 1013, 1015

I2II



INDEX

National Industrial Recovery Act (cont.) "substantial evidence" standard, 1022 nondelegation doctrine and, 177-78 unfair labor practices under, 276 petroleum industry and, 178, 181, 182 upholding of, 258, 283-86, 524-25, 551, Progressives on, 440 986, 1154 public works programs, 768-69 National Labor Relations Board (NLRB) recovery versus reform, 943 generally, 6-7 administrative law and, 430, 468, 471 reservations regarding, 172-73 right to organize, 276 AFL and, 987, 1009, 1010 Schechter case and (See Schechter case) American Liberty League and, 168, 169, 277 stockyard rates and, 520 authority to overturn contracts of company striking down of, 196-99, 1154, 1155 unions, 391, 393, 1007-8 "switch in time" and, 301-2 back pay, authority to award, 1001-5 wage and hour provisions, 172 bargaining units, authority regarding, National Labor Board, 1006, 1013, 1015 1014-18 National Labor Relations Act (NLRA) Carter Coal Co. case and, 277-78 generally, 4, 251, 311, 1012 CIO and, 987, 1007, 1010, 1027 administrative law and, 466, 470 confusion regarding Court holdings in, 537 American Liberty League and, 168, 169, creation of, 276 Fansteel case, order in, 989-95 389, 1043 American Newspaper Publishers framework constructed by Court for, 1006 Association and, 722 freedom of press and, 725 bargaining units and, 1015, 1018 Jones & Laughlin case in, 278-79 (See also challenges to, 270, 275 Jones & Laughlin case) collective bargaining under, 987, 1024 mitigation rule and, 1003-4 Commerce Clause and, 278, 355, 395, politicization of, 514-15, 546, 1007, 1027 1161 problems with, 542, 544 company unions and, 1009-10 Progressives on, 1027 "Constitutional Revolution of 1937" and, remedial authority regarding company unions, 1010-14 Declaration of Policy, 276 remedial orders, 1001 docket books and, 1157 remedial powers of, 390, 392-94 drafting of, 276 removal of executive officials from, 488 replacement workers and, 989, 991 emergency powers and, 303-4 employee rights under, 1020-21 scope of review, 524-25 employer acceptance of, 1002 "substantial evidence" standard and, enforcement of, 1021-22 1022-27 successes in Supreme Court, 986-87 FDR and, 277, 1043 First Amendment and, 278 test cases, 277-78 framework constructed by Court for, unfair labor practices and, 390, 391, 394 1006-7, 1028 union contracts, authority to overturn, freedom of contract and, 989 1007-9 freedom of press and, 723-25 National Lawyers Guild, 1031, 1032-33 "instrumentalities" of interstate commerce National Mediation Board, 1013 National Motor Vehicle Theft Act, 578, 579 and, 277-78 National Petroleum Council, 526 interest group pluralism and, 416, 1045-46 National power. See also specific topic generally, 342-43 Jones & Laughlin case (See Jones & Laughlin case) Ashwander case, scope of in, 948-49 limitations of, 987-88 civil liberties and civil rights versus, 312-13, perceived threat to, 255 1043-44 Progressives on, 1045-46 Court-packing plan and, 1142 expansion of, 1142-43 Railway Labor Act compared, 1012 remedial orders under, 1001, 1003-4 FDR on, 1142 Huey Long, as defense against, 1142 replacement workers and, 991-92 right to organize, 276 Hughes on, 1142 in Jones & Laughlin case, 342-43 Sherman Antitrust Act versus, 1031-33 sit-down strikes (See Sit-down strikes) liberals and, 1043, 1044 statutory interpretation, 305, 306, 1144 minimum wage (See Minimum wage)



INDEX

New Deal and, 1142 nondelegation doctrine (See Non-delegation doctrine) price regulation (See Price regulation) taxation (See Taxation) TVA and, 948-49 in West Coast Hotel v. Parrish, 342-43 National Prohibition Act. See Volstead Act National Recovery Administration (NRA) antitrust law and, 979, 982-83 cartels and, 967 Consumers' Advisory Board, 416 creation of, 171 Federal Radio Commission compared, 440 FTC compared, 440 "hot oil" and, 178 interest group pluralism and, 416 nondelegation doctrine and, 178 right to organize and, 276 "switch in time" and, 301-2 Native Americans, taxation of, 884-85 Natural gas rates, 446-47 Naturalization conscientious objectors and, 730-37 (See also Macintosh case) Free Exercise Clause and, 728 Labor Department and, 729, 731 pacifists and, 729-30 plenary power of Congress, 728 Naturalization Act of 1906, 729-30, 731, 733 The Nature of the Judicial Process (Cardozo), 33-34, 35, 37, 56, 109-10 Near, Jay, 691, 692–94, 695–97, 700, 701 Near v. Minnesota briefs in Supreme Court, 693-96 censorship and, 698, 699 changed conditions and, 698 deference in, 745-46 dissenting opinion in, 698-700 Due Process Clause and, 697 factual background, 689-92 Federal Radio Commission and, 701 "gag order," 691, 693, 699 government strategy in, 695-96 injunctions and, 691, 693, 699 labor law and, 701 lower court proceedings, 692-93 majority opinion in, 697-98 newspaper strategy in, 694-95 novelty of statute and, 698 nuisance law and, 693 oral arguments in Supreme Court, 696-97 police power and, 693, 695-96 prior restraint and, 694-95, 697-98 reaction to, 700-2 subsequent punishment versus prior restraint, 694-95 Nebbia, Leo, 139, 140-41

Nebbia case "affected with a public interest" test in, 142-43, 272 attitudes of Administration toward, 250 briefs in Supreme Court, 142 class legislation in, 268-69 dissenting opinion in, 143-45 Due Process Clause and, 269 emergency powers and, 143-44 factual background, 140 Fourteenth Amendment and, 142 lower court proceedings, 141 majority opinion in, 142-43 New Deal, impact on, 162-63, 164, 165 oral arguments in Supreme Court, 142 price regulation and, 139-40 reaction to, 144-45, 162-63, 164, 165 reasonableness standard in, 142 substantive due process and, 1161-62 Nebraska employment brokers licenses in, 362-63 foreign languages, teaching of in schools, 556-57 "full crew" law in, 793 railroad rates in, 441 Railway Commission, 98-99 trucking industry, regulation of, 98-99 Nebraska, University of, 934 Negative Commerce Clause. See Dormant Commerce Clause Nemacheck, Christine, 316 Nemeroff, Bernard, 864, 865, 866, 874 "Nesting," 1152 Nestle, 410 Neutrality Acts, 493-94, 501, 508-9, 510 New Deal. See also specific law or program administrative state and, 170, 437, 439, African Americans and, 613 agricultural policies in, 942 American Liberty League and, 167-70 antitrust law and, 981 attitudes of justices toward, 120 Blaisdell case, impact of, 162-63, 165 civil liberties and civil rights and, 1043, constitutional challenges to, 757 "Constitutional Revolution of 1937" and, 1-2 economic planning in, 942-43 General Welfare Clause and, 207-8 Gold Clause cases, impact of, 164-66 incoherency of policies, 943 interest group pluralism and, 416-17 law clerks and, 338-39 national power and, 1142 Nebbia case, impact of, 162-63, 164, 165 Panama Refining case and, 185-86



INDEX

New Deal (cont.) on World War I, 561-62 Progressives on, 1-2 New York (State) Soviet Union, compared to, 716 at-large elections in, 113 standing and, 762-63 copyrights, taxation of, 107 Supreme Court hostility toward, 237, 248-49 criminal anarchy law in, 682-83 diversity jurisdiction and, 847-48 New Hampshire Cox v. New Hampshire (See Cox v. New Erie Railroad Co. case (See Erie Railroad Hampshire) Co. case) hawkers, license fees, 821-22 estate tax in, 330-31, 366 workers' compensation in, 901-2, 903-5 flag salute in, 1126 New Jersey intergovernmental tax immunity and, 397 employment agency fees in, 68 interstate commerce and, 395-96 flag salute in, 1126 Laundry Wage Board, 232 Litvinov Agreement and, 504-8 "Gangster Act," 606 Hague v. CIO (See Hague v. CIO) Milk Control Act, 139-40, 145 insurance agents in, 745 Milk Control Board, 139-40, 145, insurance rates in, 68-69, 70 343-45, 346 intergovernmental tax immunity and, 397 minimum wage in, 232-36, 298 (See also interstate commerce and, 395-96 Tipaldo case) organized crime in, 605-6 Nebbia case (See Nebbia case) railroad industry in, 876 preemption and, 377-78 strikes, interstate commerce and, 394, 395 public utility rates in, 449 taxation of insurance companies in, 366-67 Schechter case (See Schechter case) venue and, 845 Socialists in State Legislature, 1077-78 New Mexico, water rights in, 885 substance versus procedure in, 910-11 New Negro Alliance, 1088-90 Swift v. Tyson (See Swift v. Tyson) taxation of imported coal, 371-73, 377-78 New Negro Alliance case "third degree" practices in, 612 African Americans, picketing by as labor picketing, 1088-95 ticket scalping in, 67 Alliance strategy in, 1091-93 venue and, 845 appeal in, 1090-91 workers' compensation in, 39-40 briefs in Supreme Court, 1091-93 New York American, 82-83 company strategy in, 1091 New Yorker on Frankfurter, 320 dissenting opinion in, 1093-94 factual background, 1088-90 on Supreme Court Building, 12 injunctions in, 1090 New York Herald Tribune majority opinion in, 1093 on Near v. Minnesota, 700 NAACP and, 1089, 1094 on Panama Refining case, 181 reaction to, 1094-95 on Scottsboro cases, 617 New Orleans Times-Picayune, 700 New York Post The New Republic on Blaisdell case, 163 on Herndon case, 712 on American Liberty League, 169 on Beck, 552-53 New York Times on "bigness," 969-70 on American Liberty League, 167 on Ashwander case, 950, 953 on chain stores, 955-56, 961-62, 965-66 founding of, 44 on Black, 324 Frankfurter and, 319, 747, 748 on Blaisdell case, 163 on Gold Clause cases, 165 on Brown v. Mississippi, 641 on Grosjean case, 722 on Cardozo, 30, 531-32 on Child Labor Amendment (proposed), 802 on Hughes, 1145 on Hughes Court generally, 221 Court-packing plan and, 150 on Nebbia case, 161, 164 on De Jonge case, 705, 706 on NLRB, 1009 on Douglas, 321 proposed Constitutional Amendment, on Gaines case, 669 221-22 on Gobitis case, 1140 on Radford case, 190 on Hague v. CIO, 1068, 1076 on Scottsboro cases, 617, 619 on Herndon case, 715 on "White Primary" cases, 656 on Hughes, 1145



INDEX

on Hughes Court generally, 249 Keynes and, 943 on Lane v. Wilson, 659 on Lovell v. City of Griffin, 1141 on Mulford v. Smith, 351 on Near v. Minnesota, 700 on New Deal and Court, 418, 419-20 on New Negro Alliance case, 1094 on NLRB, 986, 1009 on pressure groups, 48 on Railroad Retirement Act, 248 on recovery versus reform, 943 on Scottsboro cases, 616, 619, 633 on sit-down strikes, 1000 on Sunshine Anthracite Coal Company case, 357 on Sutherland, 531–32 on "switch in time," 296, 299 on "White Primary" cases, 653 Newark Law School, 1068 Newberry, Truman, 660 "Nine Old Men," 250, 252, 254 Nineteenth Amendment, 232 NIRA. See National Industrial Recovery Act (NIRA) Nixon, Lawrence A., 649, 650 NLRA. See National Labor Relations Act (NLRA) NLRB. See National Labor Relations Board (NLRB) Nondelegation doctrine administrative delegation versus conditional legislation, 497-99 in administrative law, 436, 437-38, 439 administrative state and, 176, 547 in Carter Coal Co. case, 229, 230-31, 359 in Curtiss-Wright case, 496, 497-99 Federal Radio Commission and, 182 First Amendment and, 438 FTC and, 484-85 ICC and, 177, 182 limitations of, 357-58 milk industry and, 358-59 minimum wage and, 359-60 NIRA and, 177-78 in Panama Refining case, 180, 181-82, 184-86, 357-58 Progressives and, 177-78, 440 removal of executive officials and, 484-85 rule of law and, 440-41 in Schechter case, 193-94, 197, 357-58, 440 tariffs and, 437, 438 Norfolk Journal and Guide, 1094 Norman, Norman C., 150 Norris, Clarence, 616, 633 Norris, George W., 14–15, 252, 315, 320, Ohio 481-82, 745, 760, 922-23, 944-45, 948, automobile insurance, statutory interpretation and, 875 1079

Norris-LaGuardia Act of 1932, African Americans and, 1090-91, 1092 antitrust law and, 1032 criminal law and, 1037, 1038-40 drafting of, 1079-80 framework constructed by Court for, 1028 Frankfurter and, 1079-80, 1108 Hoover and, 1079, 1080 Hutcheson case and, 1038-40 injunctions under, 1082-83, 1084-88 inter-union disputes and, 1088, 1095 jurisdiction and, 383 "labor dispute" construed, 1084-88, 1090-91, 1092, 1104-5 labor picketing and, 823 racial discrimination and, 1093, 1094 Senate Judiciary Committee and, 1079 statutory interpretation, 1103 upholding of, 986 Norris v. Alabama exclusion of African Americans from jury, 629-31 International Labor Defense in, 630, 634 "labor defense" in, 634 majority opinion in, 630-31 reaction to, 633 retrials in, 629, 633 state court appeal, 630 North Carolina Child Labor Amendment (proposed) and, 795 tobacco industry in, 348-49 North Carolina, University of, 667 Northern Pacific Railway Company, 791 Northwestern University, 897 Norton, Nathaniel, 855-56 Nortz, Eugene, 154 Novak, William, 41 NRA. See National Recovery Administration (NRA) Nuisance law Near v. Minnesota and, 693 prior restraint and, 693 Nutting, Charles B., 934 Nye, Gerald, 493 Nye, R.H., 929-30 O'Brian, John Lord, 18, 948, 952 O'Brien, John Francis, 141 Obscenity. statutory interpretation and, 79 O'Connell, Jerry, 1067 "Odd Man," 311–12 Odets, Clifford, 1143 Oglethorpe University, 941, 942 O'Gorman & Young (brokerage firm), 68-69



Index

Ohio (cont.)	Pacifists, naturalization and, 729-30
automobile searches and seizures in, 601-2	Packard Automobile Company, 987
fellow servant rule in, 858-59	Packers and Stockyards Act, 280, 520-21, 533
filled milk in, 411	Padway, Joseph, 392, 1036, 1082, 1096,
prison-made goods in, 220–21	1104–5, 1108
public utility rates in, 264–65	Palka, Frank, 1051–52
sit-down strikes in, 988	Palko v. Connecticut
workers' compensation in, 881–82	appeal in, 1052
Okayama, Hiroshi, 513–14	briefs in Supreme Court, 1052–55
O'Keefe, James, 399	continuing jeopardy and, 1052–53
Oklahoma	defense strategy in, 1052–54
"grandfather clause" in, 657–59	factual background, 1051–52
ice sellers, licenses for, 70–71, 73	government strategy in, 1054–55
intergovernmental tax immunity and, 109	incorporation of Double Jeopardy Clause
martial law in, 117, 844	and, 1052, 1053–55
petroleum industry in, 90, 108, 178	"line of division" regarding incorporation,
public utility rates in, 932–34	1055–56
Oklahoma Dust Bowl, 207	majority opinion in, 1055–57
Oklahoma Gas & Electric, 932	trial in 1051 52
	trial in, 1051–52
Oll-age pensions, 209–10	Palma, Juan, 905–6
Olken, Samuel, 721	Panama Refining case
Olson, Floyd, 112, 121, 688, 692–93	generally, 175
Olson, Ingerval, 124	administrative state and, 180, 181–82,
Olson, Julius, 841	184–86, 267
O'Melveny, Herbert, 991	briefs in Supreme Court, 180
Opinion writing	changed conditions and, 183–84
Black and, xiv	dissenting opinion in, 183–85
concurring opinions, 335 (See also specific	factual background, 179
case)	government strategy in, 180
dissenting opinions, 333–35 (See also	"hot oil" provisions and, 178, 181, 182
specific case)	Justice Department and, 179–80
evolution of, 340–41	lower court proceedings, 179–80
modification of opinions, 932–34	majority opinion in, 181–83
Van Devanter and, 20	New Deal and, 185–86
Oral arguments. See specific case	nondelegation doctrine in, 180, 181–82,
Order of Sleeping Car Conductors, 816, 818	184–86, 357–58
Oregon	oral arguments in Supreme Court, 180–81
criminal syndicalism law in, 702–3, 706	Petroleum Production Code and, 181
Democratic Party in, 475–76	presidential powers and, 183
dentists, price advertising by, 267, 268	Progressivism and, 183–84
hours of work in, 23	reaction to, 185–86
minimum wage in, 231	reporting of, 337
railroad industry in, 93-94	Panama Refining Company, 179, 180
O'Reilly, John, 115	Paraguay, embargoes and, 494–96
Organized crime	Parker, John J.
FDR and, 605	generally, 29, 30
"milk wars" and, 1100-2	Coolidge and, 28
Prohibition and, 605–7	on court of appeals, 589–90, 591
"Original package" doctrine, 372	Hoover and, 28, 29
Orren, Karen, 5	nomination as associate justice, 28, 340
Other People's Money (Brandeis), 23	opposition to, 28
Otis, Merrill, 521	rejection of nomination, 28–29, 68, 144–45,
Our Wonderland of Bureaucracy (McGuire and	161, 315
Beck), 540	Van Devanter and, 28
Oursler, Fulton, 825	Parole, statutory interpretation and, 924-25
Overacker, Louise, 651	Parrillo, Nicholas R., 915
Oxford University, 319, 1127–28	Parrish, Elsie Murray Lee, 236, 272, 274
Oxnam, G. Bromley, 726	Parrish, Ernest, 272



INDEX

Parrish, Michael, 319, 1147 Passports, statutory interpretation and, 928-29 Patents, choice of law and, 910-13 Patman, Wright, 966 Patronage system, 472, 473, 475 Patterson, Haywood, 616, 620, 628, 633 Patterson, William L., 708, 618, 707-8 Patterson v. Alabama briefs in Supreme Court, 631-32 defense strategy in, 631-32 exclusion of African Americans from jury, 628-29 International Labor Defense in, 629, 630, 634 "labor defense" in, 629, 634 majority opinion in, 632-33 reaction to, 633 retrials in, 628-29, 633 state court appeal, 630 Paul Gray, Inc., 824 Peace Movement, 726-28 Pearson, Drew, 916 Peck, James, 930 Peckham, Rufus, 554-55, 791 Pendleton Act of 1887, 475 Penn, William, 1127-28 Pennsylvania Apex Hosiery case (See Apex Hosiery case) Banking Commissioner, 847-48 Erie Railroad Co. case (See Erie Railroad Co. case) Gobitis case (See Gobitis case) Jones & Laughlin case (See Jones & Laughlin case) pharmacies in, 956, 957 preemption and, 378-81 public utility rates in, 449 receivership in, 847-48 travel agents, licenses, 32 Pennsylvania, University of, 56, 911 Pennsylvania Greyhound Lines, 1010-11 Pepper, George Wharton, 113, 114, 115, 210-11, 214-15, 477, 479, 480 Peppers, Todd C., 338 Peritz, Rudolph, 974, 976 Perjury, statutory interpretation and, 922-23 Perkins, Frances, 172, 209-10, 292, 300-1, 474, 773, 1155-57 Permits. See also Licenses in Cantwell v. Connecticut, 1120, 1122 Jehovah's Witnesses and, 1116-17 in Lovell v. City of Griffin, 1117-19 Petain, Henri-Philippe, 1124 Peterson, Harry, 125-26 Peterson, K. Berry, 792 Petrograd Metal Works, 506, 507 Petroleum Administrative Board, 178, 179, 180 Petroleum industry

Connally Hot Oil Act, 921-22, 927 "hot oil" (See "Hot oil") NIRA and, 178, 181, 182 overproduction in, 178 Panama Refining case (See Panama Refining case) Petroleum Production Code, 181 royalties, dealing in, 525-27 taxation, preemption and, 377-78 Pew, J. Howard, 167 Pfeffer, Leo, 1153-54 Pharmacies graduated gross receipts taxes and, 960-62 ownership requirements, 956 Philadelphia Tribune, 676 Phillips, David Graham, 43-44, 1045 Phillips, Leon, 844, 845 Phillips, Orie, 579, 580 Physical examinations, 891-95 Pickens, William, 621 Picketing. See Labor picketing Pickett, Edwin, 1122 Pierce, Franklin, 291 Pilpel, Harriet, 1066-67 Pinchot, Gifford, 482 Piper, Jonathan, 821-22 Pitney, Mahlon, 660, 899, 1080 Pittsburgh & West Virginia Railway, 765-66 Pittsburgh Courier on Butler, 26 on Lane v. Wilson, 658-59 on New Negro Alliance case, 1094 Pittsburgh Plate Glass, 1016-17 Pittsburgh Post-Gazette, 316 Pledge of Allegiance, 1139-40 Pliley, Jessica R., 922 Plummer, Franklin, 836 Plummer, Howard, 836 Pluralism, xiii. See also Interest group pluralism Poland, German invasion of, 509 Polenberg, Richard, 31 Police power generally, 41-42 application of, 42-43 Blaisdell case and, 125, 124 compulsory military training and, 728 conservatives and, 554-56, 695, 696 Contracts Clause and, 122-23 freedom of speech versus, 1062 Gobitis case and, 1137-38, 1140 handbills and, 1062 health and safety and, 41-42 interstate transportation and, 352 liberals and, 696 licenses and, 382 morals and, 42 Near v. Minnesota and, 693, 695-96



INDEX

Police power (cont.) Precedent. See Stare decisis price regulation and, 63-64 Preemption Dormant Commerce Clause versus, 370 prior restraint and, 693, 695-96 racial housing segregation and, 555-56 Hamilton and, 379 ICC and, 378-79 Political dissent. See Freedom of press; Freedom of speech immigration law and, 379-81 Political labels, 2 Madison and, 379 Political pluralism, xiii. See also Interest group taxation and, 377-78 pluralism trucking industry and, 378-79 Political questions. See Child Labor President. See also specific president administrative law and, 427-28 Amendment (proposed); Coleman v. Miller administrative state and, 480 Political time, 5 civil service, presidential powers regarding, Pollak, Louis, 633 474-75 Pollak, Walter H., 624-25, 630, 631-32 Congressional versus presidential power, Polygamy, 728-29 499-500 Populism, 716 foreign affairs and, 490 Populist Party, 648-49 inherent powers in foreign affairs, 499-500, Port of New York Authority, 397 501-2, 510, 511 Portland Oregonian, 706 interference with agencies, 472-73 Positivism in Erie Railroad Co. case, 873 Panama Refining case and, 183 Posner, Richard, 73 recognition of foreign governments and, Post, Robert, 333-34, 336 504-8 Postal Service removal of executive officers (See Removal patronage system in, 475 of executive officials) removal of executive officials from, 478-80 Schechter case and, 197, 198 Postmaster General, 438, 441 treaty power, 492 Poultry industry veto power, 510 kosher rules in, 192-93 war power, 491–92 Live Poultry Market Code, 190-91, 195 Press freedom. See Freedom of press respiratory illness and, 191 Pressman, Lee, 1019, 1031, 1032–33, 1066–67, Schechter case (See Schechter case) 1099 'straight killing," 192–93 Prevailing wages Pound, Cuthbert, 141 Labor Department and, 773-74, 775-76, 777 Pound, Roscoe, 135, 418-19, 420, 423, 540-41, standing and, 773-77 543, 544, 559–61, 562, 566, 569, 888 Powell, Adam Clayton, Jr., 1095 tortious interference with contractual opportunities and, 778 Powell, Ozie, 616 Price, Victoria, 615, 616, 621, 623, 629 Powell, Thomas Reed, 27-28, 33, 39, 56, 108, Price-fixing, 982-84 134, 197, 320, 351, 370, 375, 382, 552-53 Price regulation Powell v. Alabama "affected with a public interest" test and, briefs in Supreme Court, 624-25 137-38 Communist Party and, 621, 628 Carter Coal Co. case and, 226, 227, 229-30 defense strategy in, 624 Contracts Clause and, 64 emergency powers and, 162 exclusion of African Americans from jury, 622, 624 formulas versus "conceptions of basic government strategy in, 625 needs," 63-65 International Labor Defense in, 621, 624, Fourteenth Amendment and, 64 627-28 interstate commerce, effect on, 343-45 "labor defense" in, 624, 627-28 in milk industry, 139-40, 343-45, 346-47 majority opinion, 625-27 (See also Nebbia case) mob domination of trial claim, 622, 624 Nebbia case (See Nebbia case) reaction to, 627-28 police power and, 63-64 right to counsel in, 622, 624, 625-27 Prichard, Edward F., Jr., 337, 933, 993, 1000-1, speedy trial claim, 623 state court appeal, 621-23 Primary elections Power, Victor, 690 constitutional right to vote in, 661-63, Powers, Neal, 927 664, 665



INDEX

in Louisiana, 659 (See also Classic case) Progressives and, 648 "White Primary" cases (See "White Primary" cases) Princeton University, 75-76 Prior restraint censorship and, 698, 699 changed conditions and, 698 Due Process Clause and, 697 injunctions and, 691, 693, 699 labor law and, 701 Near v. Minnesota (See Near v. Minnesota) nuisance law and, 693 police power and, 693, 695-96 subsequent punishment versus, 694-95 Prison-made goods in interstate commerce, 220-21 Privacy, Brandeis on, 23 Private law interest group pluralism and, 46-47 Legal Realism and, 39-40 Private schools prohibition of, 717 state assistance to, 717 Privileges and Immunities Clause bank accounts, taxation of, 361-62 compulsory military training and, 740-41 corporations and, 720 freedom of speech and, 812-14 Hamilton case and, 743 state income tax exemptions and, 202, 203, state regulation of business and, 361 The Problem of Knowledge (Macintosh), 730 Process Act of 1789, 888 The Process of Government (Bentley), 45-46 Professionalism in administrative law, 517-18 attorneys and, 607-9 criminal law and, 568-69 prosecutors and, 608 Progressive Democracy (Croly), 559 Progressive Party, 58 Progressivism generally, xiii, 1-2 abstention and, 761-62 acceptance by Hughes Court, 2-3 administrative law, Progressive vision of, 423-29, 430-31, 432-33, 449-50, 466-71, 512, 546-49 administrative procedure and, 514, 517 administrative state, Progressive view of, 51, 170, 176–77, 376–77, 432–33, 440, 449-50, 466, 471, 487-88, 517, 1148 African Americans and, 610, 612-13 antitrust law and, 1041 Blaisdell case and, 128, 130-31 Carolene Products Footnote 4 and, 414

chain stores, Progressives on, 955-56, 961, 965 civil liberties and civil rights, Progressive view of, 551-52, 557-64 civil procedure reform and, 888-89 civil service and, 472 criminal law, Progressive perspectives on, 565-69, 1056, 1057 Crowell v. Benson and, 461, 462-63 Declaratory Judgment Act, Progressives on, 756, 757 diversity jurisdiction and, 858 Erie Railroad Co. case and, 873 FDR and, 313, 1045-46 federal jurisdiction and, 747-49 Frankfurter on, 49 freedom of press and, 722 freedom of speech and, 560-64 FTC, Progressive vision of, 424 general federal common law, critique of, 852, 858, 859-60 Great Depression, Progressives on, 170 Holmes as Progressive, 19 Hughes as Progressive, 610, 613, 1046, 1152 in Hughes Court generally, 1 Humphrey and, 482 ICC, Progressive vision of, 424-28 individualism and, 558, 560-61 interest group pluralism, transformation into, 408, 414, 415–16, 984–85, 1046, 1058, 1059 "interests" and, 7, 43-45, 1045 Legal Realism versus, 39-40 liberalism versus, 408 majoritarianism and, 559, 560-61, 562 at mid-decade, 269 moralism and, 1044 New Deal, Progressives on, 1-2 NIRA, Progressives on, 440 NLRA, Progressives on, 1045-46 NLRB, Progressives on, 1027 nondelegation doctrine and, 177-78, 440 Panama Refining case and, 183-84 patronage system and, 472 primary elections and, 648 progressive-reactionary dichotomy, 2-3, 1146, 1163–64 Prohibition and, 597 race and, 610, 612-13 racism among Progressives, 612-13 separation of powers and, 176-77, 436 "sociological jurisprudence," 559-60, 562 state versus individual, 558 Stone as Progressive, 613, 1046 substantive due process and, 444-45 Swift v. Tyson, critique of, 858, 859-60, 864 World War I, Progressives on, 561-62



INDEX

Prohibition	"Interests" and, 43-45
automobile searches and seizures and, 595,	police power and, 41–43
601-2	special treatment and, 42–43
conservatives and, 597	Sutherland on, 43
Double Jeopardy Clause and, 594	Public utilities
enforcement generally, 577–78	holding companies, 970–74
entrapment and, 589–92	interstate commerce and, 1009
forfeitures and, 594–96, 602–4	rate-making, 325, 382–83, 448–49
formulas versus "conceptions of basic	trucking industry compared, 96–97
needs," III-I2	Public Utility Holding Company Act of 1935,
Fourth Amendment and, 597–604	970, 972–73, 974–75
government structure and, III–I2	Public Works Administration, 208, 769, 770,
mere purchase of alcohol, 593	772–73
organized crime and, 605–7	Pullman, George, 815
Progressives and, 597	Pullman Co. case
repeal of, 605	abstention in, 820–21
searches and seizures and, 597–604	briefs in Supreme Court, 817–19
seizure of ships and, 587–88	company strategy in, 818–19
smuggling and, 592, 596–97	Due Process Clause and, 818, 819
strain on criminal law enforcement, 567	factual background, 814–15, 816
tariffs and, 592, 594, 600–1	Fourteenth Amendment and, 816
taxation and, 592, 593–94	government strategy in, 817–18, 819
technological change, enforcement and,	lower court proceedings, 816–17
578–79	majority opinion in, 819–21
Tenth Amendment and, 112	racial discrimination and, 816, 818–20, 821
treaties, and enforcement of, 587–88	Texas Railroad Commission proceedings,
as unconstitutional, 1066	815–16
Volstead Act, 588, 592–97, 601, 604, 605	Pullman Company, 815, 816
wiretapping, use in enforcement, 581–87	Purcell, Edward, 501, 853, 854–55, 859, 860,
The Promise of American Life (Croly), 44,	863–64, 865
48–49, 558	Pusey, Merlo J., 16, 18, 26, 300–1, 308, 309,
Property rights	537–38, 541, 1153, 1156
Carolene Products Footnote 4 and, 1058	557 50, 541, 1155, 1150
civil liberties and civil rights and, 1058	Quakers, 726, 733
demonstrations, property-based analysis of,	Quasi-judicial bodies, 484, 534, 536
1067, 1069, 1071–72, 1074–75	"Questions of degree," 57
Huey Long and, 1058	Questions of fact versus questions of law,
jurisdictional amount and, 814	429–30, 435, 469–71
labor picketing, property-based analysis of,	Quinn, Kevin, 308
1100	Quimi, 120 / m. , 300
liberty versus, 1134–35	Rabban, David, 558, 561, 562
Prosecutors, professionalism and, 608	Rabelais, 38
Proselytizing	Rabell, William, 526
Cantwell v. Connecticut (See Cantwell v.	Race. See also African Americans
Connecticut)	generally, xiii
Cox v. New Hampshire (See Cox v. New	Classic case (See Classic case)
Hampshire)	Democratic Party and, 610
by Jehovah's Witnesses, 1116–17	FDR and, 678
Lovell v. City of Griffin (See Lovell v. City of	Gaines case (See Gaines case)
Griffin)	"grandfather clauses" and, 657–59
Prosser, William, 120, 129, 135, 161–62, 163	housing segregation, police power and,
Public Contracts Act of 1935, 773, 774,	555–56
775, 776	Hughes and, 613–14
Public Contracts Division, 773	interest group pluralism and, 804
Public interest versus special interest	"labor defense" (See "Labor defense")
generally, 40	lynching and, 614–15
class legislation and, 40–41, 43	McReynolds and, 22, 613–14
factions and 40-41, 42	Mitchell case (See Mitchell case)



INDEX

Progressives and, 610, 612-13 Rate-making Pullman Co. case and, 816, 818-20, 821 abstention and, 383, 387 administrative law and, 441-43, 445-49 salaries of teachers, racial discrimination in, 819 Agriculture Department, 520, 533-35, school segregation (See School segregation) 537, 538 Scottsboro cases (See Scottsboro cases) anti-confiscation doctrine, 445-49 conservatives and, 447 Stone and, 613 "strategic litigation" (See "Strategic deference and, 383-88 litigation") Due Process Clause and, 384-86, 387, 441 "White Primary" cases (See "White ICC, 434, 437, 439, 441, 442, 520 Primary" cases) insurance agents, 68-70, 745-46 Radford, William, 187-88 Morgan cases (See Morgan cases) Radford case natural gas rates, 446-47 generally, 190 public utilities, 325, 382-83, 448-49 bankruptcy law and, 188-89 railroad rates, 91, 441-43, 448, 520, 790-91, 816 bank strategy in, 188 St. Joseph Stock Yards case (See St. Joseph briefs in Supreme Court, 188-89 Due Process Clause and, 188, 189 Stock Yards case) factual background, 187-88 standing and, 764-68 Frazier-Lemke Act and, 186-90, 248, 251 stockyard rates, 519-24, 533-34 telephone rates, 447, 449 government strategy in, 188-89 lower court proceedings, 187-88 trolley rates, 445-46 majority opinion in, 189-90 Rathbun, Samuel, 484 public purpose and, 189-90 Rational basis standard, Carolene Products takings in, 189-90 Footnote 4 and, 412 Vinton case and, 293, 294 Ratta, Louis, 821-22 Radin, Max, 737, 1056 Rauchway, Eric, 147, 205 Rauh, Joseph, 1133 Radio licenses, 549-50, 701, 778-80 Railroad industry Rauschenbush, Elizabeth, 209 Rayburn, Sam, 972 African Americans in, 814-15 Alton Railroad case (See Alton Railroad Reactionary-progressive dichotomy, 2-3, 1146, 1163-64 case) Realism. See Legal Realism common law liability, 876 Realist-formalist dichotomy, 2, 3, 934, 1146, Erie Railroad Co. case (See Erie Railroad 1149-53, 1163-64 Co. case) "fellow servant" rule in, 858-59 Reasonableness standard "full crew" laws, 793-94 generally, 265 length limits, 791-93 First Amendment and, 327 in Nebbia case, 142 Mitchell case (See Mitchell case) pension plans, workers' compensation Reconstruction compared, 243 conservatives and, 555 Pullman cars, 814-15, 816 limits on state power during, 790 Pullman Co. case (See Pullman Co. case) state debts incurred during, sovereign rate-making, 91, 441-43, 448, 520, immunity and, 785-86 Reconstruction Finance Corporation, 246, 790-91, 816 wrongful death actions, 879-80 317-18, 400-1, 839, 840 Railroad Retirement Act, 237-38, 240-43, 244, Red flag display, 686-89 Redmond, Sidney, 667 248, 288. See also Alton Railroad case Railway Labor Act of 1926, Reed, Earl, 168, 281-82, 287, 1024 Commerce Clause and, 271, 285 Reed, Stanley drafting of, 171 generally, 315, 411, 414 NLRA compared, 1012 administrative law and, 548 Ashwander case and, 948, 950, 951 statutory interpretation, 84-86, 271 Railway Labor Executives Association, 171 bank accounts, and taxation of, 361-62 A Raisin in the Sun (Hansberry), 805 bargaining units and, 1017-18 Randolph, A. Philip, 815 Butler case and, 213, 214-15, 301 Ransom, William L., 391, 392 choice of law and, 912-13 Raskob, John J., 167 in Classic case, 664



INDEX

Reed, Stanley (cont.) as avenue for review of bargaining unit in Coleman v. Miller, 797, 798 certification decisions, 1016-18 "substantial evidence" standard and, on consensus, 335 corporate income tax and, 368 1023-25 Curtiss-Wright case and, 497 Religious freedom accommodation of religious beliefs, 737 Democratic Party and, 317 dissenting opinions and, 334-35 (See also ACLU and, 1118 Cantwell v. Connecticut (See Cantwell v. specific case) Dormant Commerce Clause and, 371 Connecticut) in Erie Railroad Co. case, 867, 868, 870, Cox v. New Hampshire (See Cox v. New Hampshire) estate tax and, 364, 366 Due Process Clause and, 1124 in Fansteel case, 998-1000 Establishment Clause (See Establishment Clause) federal jurisdiction and, 812 Federal Rules of Civil Procedure and, 809 flag salute and, 1126 (See also Gobitis case) fire insurance companies, taxation of, 364, Free Exercise Clause (See Free Exercise 366-67 FTC, removal of Humphrey from, 481, Gobitis case (See Gobitis case) Hamilton case (See Hamilton case) 484, 485 gasoline tax and, 376 incorporation, 741 Gold Clause cases and, 149 interest group pluralism and, 1123, 1133 in Hague v. CIO, 1075 Jehovah's Witnesses (See Jehovah's Hoover and, 317 Witnesses) intergovernmental tax immunity and, Lovell v. City of Griffin (See Lovell v. City of 399, 400 interstate transportation and, 354 Macintosh case (See Macintosh case) Jones & Laughlin case and, 282, 283 naturalization (See Naturalization) Jones v. SEC and, 527-28 Peace Movement, 726-28 labor law and, 393 political dissent versus religious dissent, labor picketing and, 1106, 1108-9 744-46 licensing fees and, 328 proselytizing, 1116–17 life of, 317-18 religion-based exemptions, 744-45 in Meadowmoor case, 1106, 1108-9 Removal of actions, statutory interpretation milk price regulation and, 347 and, 920-21 in Morgan cases, 536, 539 Removal of executive officials NLRA and, 525 Congress and, 477–78, 479 "Decision of 1789" and, 476–77, 478, 485 NLRB and, 1008-9 nomination as associate justice, 318 FDR and, 486-87, 488-90 nondelegation doctrine and, 358 FTC, removal of Humphrey from, 5, 247, Prohibition and, 602 480-86 rate-making and, 448 ICC, 485, 488 recusals of, 974 "independent" agencies, 480–90 restrictive covenants, class actions and, Madison and, 476 808, 810 NLRB, 488 sales and use taxes and, 371-72 nondelegation doctrine and, 484-85 Schechter case and, 194, 196, 197 Postal Service, 478-80 scope of review in post-Erie cases, 878-79, principal versus inferior officers, 477-78 880-82 separation of powers and, 485 sit-down strikes and, 998-1000 Take Care Clause and, 478, 480 as solicitor general, 318, 770, 773, 935, 948, Rensberger, Jeffrey L., 901 Rent control Soviet nationalization cases and, 504, 506-7 Blaisdell case compared, 125-26 Contracts Clause and, 123 statutory interpretation by, 917-18, 928-29 "substantial evidence" standard and, 1025 Reorganization Act of 1939, 489, 511 title to property and, 404 Repeal Enforcement Act, 602 wiretapping and, 583, 586 Replacement workers Reeves, Albert, 521 authority to hire, 988, 989-93 Refusal to bargain Due Process Clause and, 992

I 222



INDEX

NLRA and, 991-92 NLRB and, 989, 991 sit-down strikes and, 993 Report on Manufactures (Hamilton), 206 Reporter, Supreme Court. See United States Reports Republican Party. See also specific individual addition of justices during Civil War, 253 African Americans and, 555, 671 American Liberty League and, 167 Brandeis and, 23-24 Butler and, 26 Hoover and, 27, 567 Hughes and, 14, 613 Humphrey and, 480-86 Hutcheson and, 1036 minimum wage and, 235-36 in Minnesota, 112, 113 Norris and, 944, 1079 in South, 28, 648-49 on Soviet Union, 502 Stone and, 613 Sutherland and, 24-25, 627 Taft and, 11 Van Devanter and, 20 Walter-Logan Bill and, 545 Willkie and, 760 Republic Steel Company, 193, 1001, 1004-5, Reserve Officers Training Corps (ROTC), 726-28, 740-41, 742 Res judicata, class actions as, 807-8, 811 Respondeat superior, 1013 Restatement of the Conflict of Laws, 897, 909, 911,912 Restraint of trade, sit-down strikes not deemed, 1033-35 Restrictive covenants class actions and, 805-12 enforceability of, 805-6 timidity of Court regarding, 811-12 Rethinking the New Deal Court (Cushman), 1159 Revenue Act of 1916, 58 Revenue Act of 1932, 378 Reynolds, George, 728-29 Reynolds, W. Alonzo, 740 Ribble, F.D.G., 306 Richardson, Seth, 571-72 Richberg, Donald, 171, 174, 178, 194, 195, 196, 792 Richter, A.W., 1085-86 Riesenfeld, Stefan, 502, 511 Riesman, David, 701-2 Rigby, Anna, 1120 Right to counsel effective assistance of counsel, 626, 634-35,

Fifth Amendment and, 626 Fourteenth Amendment and, 626 in Powell v. Alabama, 622, 624, 625-27 Right to organize, 276 Ripeness, Carter Coal Co. case and, 230 Rip-Saw (newspaper), 690-91, 698 The Rise and Fall of Classical Legal Thought (Kennedy), 1151 Rivet, Charles, 718-19 Robb, Charles, 573 Roberson, Willie, 616 Roberts, Beauregard, 452 Roberts, Owen J. generally, 1144 in Alton Railroad case, 240-44 antitrust law and, 982, 983 in Apex Hosiery case, 1035 attitudes of Administration toward, 250, 255, 258, 260 bank accounts, and taxation of, 361-62 bargaining units and, 1018 Black and, 324, 333 in Butler case, 210, 215-18, 219-20, 307, 309 in Cantwell v. Connecticut, 1122-23 Carolene Products Footnote 4 and, 414, 415 as centrist, 1147-48 chain stores and, 957, 958-59, 960-63, 964, 965 in Classic case, 663 in Coleman v. Miller, 797 as conservative, 29 corporate income tax and, 368, 369 in Crowell v. Benson, 459-60 deference and, 384-85 derivative actions, constitutional questions and, 758 dissenting opinions and, 334-35 (See also specific case) Due Process Clause and, 1049-50 entrapment and, 590, 591-92 equitable estoppel and, 883-84 estate tax and, 61, 366 federal jurisdiction and, 812-13, 814 Federal Rules of Civil Procedure and, 893-94 fire insurance companies, taxation of, 366–67 formulas versus "conceptions of basic needs," 57-63 "Four Horsemen," voting with, 248 Frankfurter and, 297-98, 309 freedom of press and, 723-24, 725 freedom of speech and, 1062-64 gasoline tax and, 376 in Gobitis case, 1133 in Hague v. CIO, 1070, 1075-76, 1115 in Herndon case, 713-15



INDEX

Roberts, Owen J. (cont.) Roddy, Stephen, 616, 619-20, 622, 623, 624, Hoover and, 68 625, 626, 627 Rodgers, Daniel, 43-44, 45-46, 417 Hughes and, 16, 1154-57 in Hutcheson case, 1039, 1040 Rogers, Will, 169, 832 ICC and, 94 Rolfe, Louise, 82-84 independent state grounds and, 836-39, 842 Roosevelt, Franklin D. inter-chambers materials and, xiv generally, 4, 6, 38, 935 administrative law and, 13, 471, 511 intergovernmental tax immunity and, 108 in Jones & Laughlin case, 283 administrative state and, 247-48, 471, labor picketing and, 1084, 1086-87, 1108, African Americans as constituency, 1043-44 1111 law clerks and, 338 American Liberty League and, 254, 299, 311 legal education of, 56 antitrust law and, 975-76, 978, 981 liberal shift of, 296, 308, 957 appointments to Court, 400 in Meadowmoor case, 1108 attitudes toward Supreme Court, 311-13, minimum wage and, 272 419, 420 bank holiday and, 146, 943–44 on "bigness," 967–68 modification of opinions and, 933 national excise taxes and, 201 on Bill of Rights, 1043 in Nebbia case, 142-43, 145, 1161 in New Negro Alliance case, 1093, 1094 Bill of Rights Day and, 1141 NLRA and, 723-24 Child Labor Amendment (proposed) and, nomination as associate justice, 29, 68 795-96 nondelegation doctrine and, 359 CIO and, 1000, 1004-5 as part of "Old Court," 369 political assessment of, 161, 165 on civil liberties and civil rights, 312-13, politics of, 2 civil service, politicization of, 473-74, 475 Prohibition and, 111–12, 594, 599, 600 coal mining industry and, 224 on collective bargaining, 172 rate-making and, 384-85, 447 Commonwealth Club speech, 170, 292, 312, removal of actions and, 894 replacement workers and, 990-92 1043 on Constitution, 1043 restrictive covenants, class actions and, 808, 810 Constitution Day speech, 311-13, 1043, sales and use taxes and, 373-74 1142, 1143 scope of review in post-Erie cases, 881 Court-packing plan (See Court-packing plan) standing and, 767-68, 771-73, 779-81 Declaratory Judgment Act and, 750 state income tax exemptions and, 363-64 Democratic Party and, 255-56, 493, 706 "destroyers-for-bases" deal and, 509-10 statutory interpretation by, 917-18, 922-24, embargo and, 495 on substance versus procedure, 893-94 Erie Railroad Co. case and, 872 "substantial evidence" standard and, on experimentation, 942 Fireside Chats, 146, 149, 256, 474, 1023-24 Supreme Court Building and, 332 975-76, 978 "switch in time" and, 4, 296-302, 304, foreign affairs and, 493 "Four Freedoms," 275, 1058 307-8, 309-10, 1153, 1158 in Thornhill v. Alabama, 1097 France and, 508-9 in Tipaldo case, 236, 258, 299 Frankfurter and, 251, 319, 1043 title to property and, 404 on Frazier-Lemke Act, 186-87, 190 tobacco industry regulation and, 350-51, 354 freedom of speech and, 706 TVA and, 952-53 FTC, removal of Humphrey from, 5, 247, 480-81, 482-84, 486 unemployment insurance and, 288-89 Van Devanter and, 29 on Germany, 508-9 venue and, 847 Gold Clause cases and, 149-50 "gold clauses," unenforceability of, 146-47 wealth of, 120 "Good Neighbor" policy, 493, 494, 495 in West Coast Hotel v. Parrish, 299 in "White Primary" cases, 652, 654–55, 656 wiretapping and, 583–84, 585, 586 on Great Depression, 171 on *Hague v. CIO*, 1076 on "hot oil," 178, 179–80, 186 Robinson, Joseph, 254-55, 261, 300, 314

I 224



INDEX

Huey Long and, 716 Ross, William G., 237, 270 Hughes and, 17–18, 147, 1144 "Hundred Days," 302–3, 945 Rostow, Eugene, 357 Rotondo, Frank, 593 Hutcheson and, 1036 Rottschaefer, Henry, 418 "independent" agencies and, 486-87, Roudabush, Charles, 1126-27 488-90 interest group pluralism and, 313, 1045-46 Rowley, Florence, 61 internationalism and, 493 on Italy, 508-9 Rule of law judges appointed by, 410-11, 774, 807, 816, 864-65, 911, 990, 1031, 1066-67, 1071, judicial time and, 5 generally, 868 on national power, 1142 on need for economic planning, 941-43 New Deal (See New Deal) in 1936 election, 253-54 enactment of, 889-90 on NIRA, 170-71, 172, 173, 276, 313 FDR and, 889-90 NLRA and, 277, 1043 Oglethorpe University speech, 941, 942 old-age pensions and, 209 893, 895 organized crime and, 605 Rules of Decision Act on overproduction, 941 choice of law and, 895 Progressivism and, 313, 1045-46 on public utility holding companies, 971, race and, 678 on Railroad Retirement Act, 244 removal of executive officials and, 486-87, Russell, Archie, 1084-85 revolutionary nature of Court under, 934 Rules Enabling Act and, 889-90 on Schechter case, 199 Social Security Act and, 292 Soviet Union and, 502-3 Rutledge, Wiley, 471 Sutherland and, 501 TVA and, 945 unemployment insurance and, 209 Saden, George, 1052-54 unions as constituency, 1043-44 wiretapping and, 584, 587 Safety Appliance Act, 871 Roosevelt, Theodore generally, 44, 556 antitrust law and, 833 Brandeis and, 23-24 estate tax and, 58 Frankfurter and, 318 FTC and, 25 Hughes and, 14 judges appointed by, 859, 1031, 1090 reaction to, 524 McReynolds and, 21 as model of executive, 44 race and, 612 Sutherland and, 24-25 522, 523-24 tobacco industry regulation and, 347-48 St. Louis Post-Dispatch Van Devanter and, 20 on Brown v. Mississippi, 641 Root, Elihu, 513 on Gaines case, 669 Rosenfield, Maurice, 811 on Gobitis case, 1140 Rosenman, Samuel, 224 on Herndon case, 715

Rowan & Nichols Oil Company, 383-88 Rukeyser, Merryle Stanley, 955 administrative state and, 512 nondelegation doctrine and, 440-41 Rule of reason in antitrust law, 977-78, 980 Rules Enabling Act of 1934, Congressional versus Court authority to promulgate rules, 892, 893 Federal Rules of Civil Procedure and, 890 substance versus procedure, 890-91, 892, diversity jurisdiction and, 853, 855 Equal Protection Clause and, 860-61 Erie Railroad Co. case and, 867, 869, 870 general federal common law and, 855 post-Erie cases and, 879, 881, 882-83 Swift v. Tyson and, 856-57, 863, 870-71, 873 Russell, Charles Taze, 1116 Ruthenberg, Charles, 682-83, 684 Rutherford, Joseph, 1061, 1116-17, 1118, 1120-21, 1124, 1125, 1126, 1133 Rynder, Ross Dean, 521, 522 Sacco, Nicola, 319, 320, 617-18, 619, 1047 St. John, Adele Rogers, 274 St. Joseph Stock Yards case briefs in Supreme Court, 521-22 company strategy in, 521-22 factual background, 520 government strategy in, 522 independent judgment test, 520-21, 522-24 lower court proceedings, 520-21 scope of review, 520-24 stockyard rates and, 519-24 "substantial evidence" standard, 520-21,



INDEX

St. Louis Post-Dispatch (cont.) NAACP and, 666-67 on Nebbia case, 161 in professional education, 667 "separate but equal," 667 on Panama Refining case, 185 St. Valentine's Day Massacre, 82-83 Schragger, Richard, 956 Schumpeter, Joseph, 942 Saks, J. Benson, 1123, 1138-39 Sales and use taxes Schweinhaut, Henry A., 1076 Dormant Commerce Clause and, 371-74 Schwellenbach, Lewis, 321 Schwimmer, Rosika, 729-30 Equal Protection Clause and, 841 independent state grounds and, 840-42 Scientific racism, 612-13 Saloutos, Theodore, 942 Scottsboro cases San Antonio Bar Association Law School, generally, 678 1117 Communist Party and, 615, 619, 620, Sanborn, Walter, 119 621, 633 Sanders Brothers, 778 effective assistance of counsel and, 1046 Sanford, Edward factual background, 615 death of, 28, 68 International Labor Defense in, 616-17, 618, freedom of speech and, 683-84, 685, 724, 619–21, 628, 634 "labor defense" and, 617-19, 628, 634, 677 730, 1046 San Francisco Chronicle, 161 (See also "Labor defense") Sanitary Grocery Company, 1090 liberals and, 633, 639 Sargent, John, 979 NAACP and, 615, 619, 620-21 Saturday Press (newspaper), 691-93, 695, Norris v. Alabama (See Norris v. Alabama) 698, 700 Patterson v. Alabama (See Patterson v. Saturday Review, 787 Powell v. Alabama (See Powell v. Alabama) Sayre, Francis Bowes, 680 Schacter, Harry W., 953-54 retrials, 628-29, 633 Schattschneider, E.E., 416 trials, 616 Schechter Brothers, 175-76, 190-92, 302, 305, Scully, Arthur, 601 306, 1009 Searches and seizures of automobiles, 595, 601–2 "mere evidence" rule, 599 Schechter case American Liberty League and, 302 briefs in Supreme Court, 193-96 private homes, searches of, 600 Commerce Clause and, 193, 194-95, Prohibition and, 597-604 197-99, 304, 305 search incident to lawful arrest, 597-98 company strategy in, 193-94 warrant requirement, 598-600 concurring opinion in, 198-99 wiretapping, 585-86 Sears, Kenneth C., 736 factual background, 192 government strategy in, 194-96 SEC. See Securities and Exchange Live Poultry Market Code and, 195 Commission (SEC) lower court proceedings, 193 Secondary boycotts, 1028-29 majority opinion in, 196-98 Secular time, 5 Securities Act of 1933, 481 NIRA and, 193, 194, 195 nondelegation doctrine in, 193-94, 197, Securities and Exchange Commission (SEC) 357-58, 440 generally, 481 oral arguments in Supreme Court, 196 administrative law and, 247, 430, 467-68 presidential powers and, 197, 198 J. Edward Jones and, 525-32 (See also Jones striking down of NIRA, 196-99 v SEC) "switch in time" and, 1154 public utility holding companies and, 972-73 unfair competition and, 194, 195-96, registration statements, withdrawal of, 527–28, 529, 530, 531 197, 198 Schenck, Charles, 680, 682 Star Chamber, compared to, 529, 530, 532 Schiller, Reuel, 435, 466 Securities Exchange Act of 1934, 527 Schlesinger, Arthur, 1155 Seelig Creamery, 344 Schmidt, Benno, 872, 909 Seidman, Louis Michael, 1139-40 Seldes, George, 493 School segregation Fourteenth Amendment and, 668 Selective Service Act, 732 in graduate education, 667 Self-incrimination privilege, 639, 1053 in law schools, 667 Self-organization, right of, 1008-9



INDEX

Seligmann, Herbert, 619 Shulman, Harry, 745-46, 827-28, 842-43, 870, Senate Judiciary Committee 872, 873 Sibbach, Hertha, 891 Court-packing plan and, 257, 259-60, Silbey, Samuel, 816-17 295 Norris-LaGuardia Act and, 1079 Simon, James, 156, 219 Senn, Paul, 1080-81 Simpson, Clarence, 1096 "Separate but equal" Simpson, George, 125-26 Mitchell case and, 673 (See also Mitchell Simpson, Thacher, & Bartlett (law firm), 454, 581 school segregation, 667 (See also Gaines Singer, Henry, 607-9 Sit-down strikes case) Separation of powers generally, 987 administrative law and, 435-45 CIO and, 993-94 employees, striking workers as, 998 administrative state and, 435 ICC and, 176, 184, 436 Fansteel case (See Fansteel case) judicial salaries and, 158 interstate commerce and, 1035 Progressives and, 176-77, 436 labor picketing compared, 999-1000 removal of executive officials and, 485 not deemed restraint of trade, 1033-35 Seventh Amendment, 266, 572 origins of, 988 Severability prohibition of, 1000 Carter Coal Co. case and, 227, 229-30, property damage in, 994, 995-96, 997-98 public opinion regarding, 1000 231, 357 Jones & Laughlin case and, 281 reinstatement of striking workers, 989-93, Severance tax, Equal Protection Clause 994-95 and, 717 replacement workers and, 993 Seymour, Whitney North, 590, 710-11, 713 termination for good cause, 996-98, 999 unfair labor practices and, 994-95, 998-99 Shafter, Alfred, 82 Shapin, Steven, 1 violence in, 994, 995-96, 997-98 Sharfman, Isaiah Leo, 176, 177, 184, 424-28, Sixteenth Amendment, 58 Sixth Amendment 432, 436, 437, 439, 442, 472 - 73, 481,confrontation of witnesses, 1050 $487 - 88,\, 489,\, 514,\, 515,\, 516 - 17,\, 542$ Sharp, Malcolm, 745, 746 effective assistance of counsel and, 1046 jury trials and, 570, 572, 573-75, 576 Shaw, Elwyn R., 807-8 Skowronek, Stephen, 5, 45, 49, 474 Shearer, James D., 833 Sherman Antitrust Act. See also Antitrust law Sloan, Alfred, 167 generally, 967 Small cases, xiv AFL and, 1029 Smith, Adam, 368 conservatives on, 1028-29 Smith, Al, 167 criminal law and, 1036-41 (See also Smith, Blackwell, 175 Hutcheson case) Smith, E.S., 97-98 Hutcheson case and, 1036-41 (See also Smith, George Otis, 113-14 Smith, John Thomas, 911, 913 Hutcheson case) independent state grounds and, 832-33 Smith, Rixey, 916 NLRA versus, 1031-33 Smith, Walter Marvin, 935, 936 Smith, Young, 423 price-fixing, 982-84 secondary boycotts under, 1028-29 Smuggling, Prohibition and, 592, 596-97 statutory interpretation, 780-81 Snell, Bertrand, 27 strikes and, 1030 Snyder, Herman "Red," 1046-47 Sugar Institute and, 979-81 Snyder, J. Buell, 223-24 trade associations and, 977 Social Security Act unfair competition and, 354 generally, 244, 251, 300 unions under, 1028, 1032, 1033-35 challenges to, 270, 275 Sherwood, William K., 1112 docket books and, 1157 Shields, Henry, 636-37, 638, 641 General Welfare Clause and, 292-93, 307 Shinner, E.G., 1084-85 interest group pluralism and, 416 Shipstead, Henrik, 26 Supremacy Clause and, 293 Shlaes, Amity, 192-93 Tenth Amendment and, 292 Shouse, Jouett, 167-68 upholding of, 292-93, 1153, 1156



INDEX

Social Security Administration, 474 Special interest legislation. See Class Socialist Labor Party, 391 legislation Socialist Party, 15, 680 Specialized federal common law, 885-86 "Sociological jurisprudence," 559-60, 562 Special treatment Sociology, 34, 36 generally, 42-43 Soil Conservation Act, 346 application of, 42-43 Solicitor General, 934-37. See also specific hours of work and, 42 individual Speech freedom. See Freedom of speech Solomon, Gus, 703-4 Spencer, Herbert, 1044 Somerset Manufacturing Company, 394 "The Spider" (play), 825 Spillinger, Clyde, 898-99 Sommermon, Eva, 806 Soper, Morris, 590 Spingarn, Arthur, 650-51 Sorrells, C.V., 589-90 Spousal testimony, 265-66 Soule, George, 955 Sproviere, Salvatore, 918 Sources, xv-xvi Stalin, Josef, 689, 707, 1132, 1143 Standard Oil Company, 423, 717 Souter, David, xv South Africa, judicial salaries in, 402 Standing South Carolina generally, 782 antitrust law and, 780-81 contempt in, 929-30 suits between states and, 784-85 in Ashwander case, 757-62, 771-73, truck weight limits in, 408-9 944 Southern California Conference of Methodist in Carter Coal Co. case, 227 Episcopal Church, 727 Child Labor Amendment (proposed) and, Southwestern Railway Company, 405 796-97, 799 competitive advantage, loss of, 764-73 Sovereign immunity Article III and, 785–86, 788 conservatives and, 762 damnum absque injuria, 764, 769, 770, citizens of other states, suits against states by, 784-85 771-72, 777, 778-79 citizens of states, suits against own states by, Federal Communications Commission and, 785-86 778-80, 781 Contracts Clause and, 784, 785, 795, 834 financial injury and, 781-82 federal jurisdiction and, 790 ICC and, 764-68 foreign nations, suits against states by, injury versus loss of advantage, 763-64 legally protected interests, 763-64 786-90 railroad "full crew" laws and, 793-94 Legal Realism and, 763 railroad length limits and, 791-93 mandamus and, 767-68 New Deal and, 762-63 railroad rates and, 790-91 Reconstruction, state debts incurred during, prevailing wages and, 773-77 purposes of, 762-63 785 - 86Revolution, state debts incurred during, radio licenses and, 778-80 784-85 rate-making and, 764-68 state officers, suits against, 790-95 taxpayer standing, 208, 211, 215-16, 757, waiver of, 834 Soviet Union treble damages and, 780-81 as administrative state, 517 TVA and, 768, 771-73, 944 compulsory loyalty in, 1132 unincorporated associations due process protection, effect of threat of and, 766 Communism on, 610, 645 Stanford Law School, 375, 689, 703 economic conditions in, 502 Star Chamber, 529, 530, 532, 640 FDR and, 502-3 Stare decisis Frankfurter on, 52 Brandeis on, 109-10 Hoover and, 502 Butler on, 37 nationalization claims against, 503-8 Cardozo on, 110 Frankfurter on, 331-32 New Deal compared to, 716 Republican Party on, 502 Hughes on, 332 Russian Revolution, 679, 681 in legal theory, 36-37 United States recognition of, 503, 504-8 Stone on, 36-37 Spaulding, Norman, 301 Van Devanter on, 37



INDEX

State action requirement generally, 655 Fourteenth Amendment and, 650, 651 "White Primary" cases and, 650-52, 654-55 State Department, 495-96, 502-3 State immunity, 262 State regulation of business. See also specific topic generally, 388 Dormant Commerce Clause (See Dormant Commerce Clause) Due Process Clause and, 361 Equal Protection Clause and, 361 interstate commerce and, 101, 102, 381-82 preemption (See Preemption) Privileges and Immunities Clause and, 361 rate-making (See Rate-making) Statutory interpretation generally, 915 Agricultural Adjustment Act, 921 by Black, 917-18, 924-25, 927 by Brandeis, 79, 81-82 by Butler, 920-21 Clayton Act, 1080 Connally Hot Oil Act, 927 contempt and, 929-31 copyright law and, 81-82, 916-17 divisions among justices, 929-31 by Douglas, 927, 929, 930-31 ejusdem generis, 919, 921-22 Establishment Clause, 78 false statements and, 921-22, 928-29 Food and Drugs Act, 79-81 formulas and, 78-86 by Frankfurter, 926-27, 929 Gold Clause cases and, 152-53 by Hughes, 84, 85-86, 163, 921-22, 931 immigration law and, 915-16, 918-19, 923-24 indictment versus information, 919-20 kidnapping and, 919 Legal Realism and, 932-34 Mann Act, 82-84, 922 by McReynolds, 84, 915-17 NLRA, 305, 306, 1144 Norris-LaGuardia Act, 1103 obscenity and, 79 parole and, 924-25 passports and, 928-29 perjury and, 922-23 Railway Labor Act, 84-86, 271 by Reed, 917-18, 928-29 removal of actions and, 920-21 by Roberts, 917-18, 922-24, 927, 931 scope of review in post-Erie cases, 881 Sherman Antitrust Act, 780-81 by Stone, 83-84, 931 sunset provisions, 927

by Sutherland, 79-81, 918-20, 927 by Taft, 84 testimony by defendants and, 926-27 willful refusal to provide information, 923 Staudt, Nancy, xiv-xv Steel Workers Organizing Committee (SWOC), 279, 1001, 1004 Stennis, John, 636-37, 641 Stenographic clerks, 338 Stentor Electric Company, 910-11 Stephens, Harold, 180-81, 1091 Sterling, Ross, 116-17 Stern, Carl, 630 Stern, Robert, 195, 223, 224, 277-78, 306-7, Stevens, Raymond, 482 Stewart, Raymond, 636-37 Stigler, George, 97, 408-9 Stimson, Henry, 318, 319, 805 Stipulations in class actions, 806-7 Stockyards interstate commerce and, 348 rates, 519-24, 533-34 (See also St. Joseph Stock Yards case) Stoffer, David, 1066-67 Stone, Harlan Fiske generally, 30, 1044, 1064, 1156 additur and, 266 administrative law and, 436, 463-64 "affected with a public interest" test and, 67 in Alton Railroad case, 243 in Apex Hosiery case, 1033-35 as associate justice, 27-28 bank accounts, and taxation of, 361-62 bargaining units and, 1015-16, 1018 on "bigness," 970 Black and, 323, 325, 326-27 in Blaisdell case, 126-27, 128, 268 Brandeis and, 27-28 in Butler case, 217-20 in Carolene Products case, 412-13 Carolene Products Footnote 4 (See Carolene Products Footnote 4) in Carter Coal Co. case, 227 chain stores and, 961, 963 choice of law and, 905, 907-8, 909 civil liberties and civil rights and, 410, 1141 in Classic case, 663-66 in Coleman v. Miller, 797, 798 company unions and, 1012, 1013-14 compulsory military training and, 742-43 at Conference, 335, 339 confirmation as associate justice, 27 conscientious objectors and, 735 on consensus, 334, 335 as conservative, 27 consideration for chief justice, 13 Coolidge and, 27



INDEX

Stone, Harlan Fiske (cont.) liberal shift of, 28, 414 corporations, and applicability of Fourteenth life of, 26-27 in Macintosh case, 734 Amendment to, 326 Court-packing plan and, 261-62 in Meadowmoor case, 1108 on criminal law, 568-69 municipal bankruptcies and, 247 in Crowell v. Benson, 459-60, 461 national excise taxes and, 201 Declaratory Judgment Act and, 751-53, 754 naturalization and, 734, 735 New Deal and, 248, 249 deference and, 384-85, 387 derivative actions, constitutional questions NLRA and, 989, 1020-21 and, 758 nomination as chief justice, 335, 340, diversity jurisdiction and, 862, 872 419-20 on domicile for purposes of taxation, 104-5 nondelegation doctrine and, 359-60 Dormant Commerce Clause and, 371 nondiscrimination and, 409 Douglas and, 320 in Panama Refining case, 180, 185 entrapment and, 591 on "pigeon-holing," 407 equitable estoppel and, 883-84 political assessment of, 165 in Erie Railroad Co. case, 867-68, 869, 871, preemption and, 378-79, 381 prison-made goods in interstate commerce estate tax and, 58, 60, 62-63, 364, 365-66 and, 220-21 excise taxes and, 262-63 as Progressive, 613, 1046 in Fansteel case, 996-97, 998, 999, 1000-1 Prohibition and, 594-96, 601 federal jurisdiction and, 812-14, 828, 848 public utility holding companies and, 973-74 fire insurance companies, taxation of, public utility rates and, 325 in Pullman Co. case, 820-21 formalism and, 104-5, 907 race and, 613 formulas and, 12-13, 32-33 Railway Labor Act and, 271 rate-making and, 384-85, 387, 446, 447 Frankfurter and, 27-28 freedom of speech and, 1061 reasonableness standard and, 265 gasoline tax and, 376 recharacterization by, 1034-35 general federal common law and, 862, 872 Republican Party and, 613 on General Welfare Clause, 209 restrictive covenants, class actions and, in Gobitis case, 1134-35, 1138-40 808-11 in Gold Clause cases, 149, 153-54, 155, 264, in St. Joseph Stock Yards case, 522, 523 sales and use taxes and, 372-73 406-7 gross income tax and, 374, 375 scope of review in post-Erie cases, 880, in Hague v. CIO, 1075-76 sit-down strikes and, 996-97, 998, 999, in Hamilton case, 742-43 in Herndon case, 712 Holmes and, 27-28 sovereign immunity and, 794-95 Hoover and, 27 in Soviet nationalization cases, 508 Hughes and, 31, 745 on stare decisis, 36-37 state income tax exemptions and, 202-5, in Hutcheson case, 1038, 1039 ICC and, 90, 91-92, 93 immigration law and, 379, 381 statutory interpretation by, 83-84, 931 independent state grounds and, 841, 842 "substantial evidence" standard and, inter-chambers materials and, xiv 1024-25 interest group pluralism and, 408, 1057 Supreme Court Building and, 11, 332 Sutherland and, 25 intergovernmental tax immunity and, 106-8, Taft and, 27-28, 335 389, 397-400 interstate transportation and, 354-56 taxation and, 363 in Jones v. SEC, 529-30 in Thornhill v. Alabama, 1097, 1098, 1099, jurisdictional amount and, 822-23, 824-25 jury trials and, 572 in Tipaldo case, 234, 235, 236 labor law and, 394, 395-96, 989 transportation agent licenses and, 381-82 labor picketing and, 1108, 1111-12 trucking industry, regulation of, 98-99, 378-79 law clerks and, 338 Legal Realism and, 39, 55-56, 365 unemployment insurance and, 288, 289 legal theory and, 56 vested rights and, 77



INDEX

in West Coast Hotel v. Parrish, 272-73, 298-99 in "White Primary" cases, 652, 656 Stone, I.F., 811-12, 1000 Stone, Kimbrough, 521 Stone, Royal, 124-25 Storey, Moorfield, 24 Storrs Lectures, 49, 440 Story, Joseph, 206, 699, 856-57, 870, 895, 898 Strack, William N., 521, 522 Stradford, C. Francis, 805 Straight, Willard, 44 "Strategic litigation Classic case (See Classic case) Gaines case (See Gaines case) "labor defense" versus, 677-78 Mitchell case (See Mitchell case) NAACP and, 611, 648 "White Primary" cases (See "White Primary" cases) Straus, Isaac Lobe, 391 Strecker, Joseph, 923-24 Strikes generally, 988 as antitrust law violations, 1030 employees, striking workers as, 1024 interstate commerce, effect on, 283, 394, 395, 1029-30, 1035 reinstatement of striking workers, 989-93 replacement workers (See Replacement workers) Sherman Antitrust Act and, 1030 sit-down strikes (See Sit-down strikes) Stromberg, Yetta, 686-89 Stryker, Lloyd, 532 Stumberg, George Wilfred, 443, 470 Sturdivant, J.L., 636-37 Sturges, Wesley, 392 "Substantial evidence" standard in administrative law, 520-21, 522, 523-24 collective bargaining and, 1023-25 judicial review, 520-21, 522, 523-24 NLRA, 1022 NLRB and, 1022-27 refusal to bargain and, 1023-25 in St. Joseph Stock Yards case, 520-21, 522, 523-24 Substantive due process administrative law and, 449 choice of law and, 900 civil liberties and civil rights and, 413 jury trials and, 572 jury views, right of defendant to be present at, 1050 milk industry and, 412-13 Nebbia case and, 1161-62 Progressives and, 444-45 takings and, 441

Sugar Institute, 976, 979-81 Sugar Trust, 979 Sullivan, Philip, 1104-5 Sullivan & Cromwell (law firm), 976-77 Summers, W.L., 212 Sumners, Hatton, 259 Sunburst Oil Refining Company, 109-10 Sunderland, Edwin, 892-93 Sundheim, Joseph, 847-48 Sunset provisions, 927 Sunshine Anthracite Coal Company, 356-57 Sunstein, Cass R., 357-58, 762 Supremacy Clause, Social Security Act and, 293 Supreme Court Building, 11-12, 332, 341 Supreme Court Reporter. See United States Reports Supreme Liberty Life Insurance Company, 805 Sutherland, Arthur E., 140-41 Sutherland, Asbill, and Brennan (law firm), 710 Sutherland, George ABA and, 25, 627 additur and, 266 "affected with a public interest" test and, 67, 68, 69, 70-71, 73 in Ashwander case, 951 as associate justice, 25 bank accounts, and taxation of, 361-62 in Blaisdell case, 131-36, 267, 1151 in Carter Coal Co. case, 227-29, 305-6 chain stores and, 959-60, 964-65 civil liberties and civil rights and, 1148 civil procedure reform and, 889 congratulatory letters and, 333 constitutional interpretation and, 490-91 Court-packing plan and, 252 in Curtiss-Wright case, 499-502, 510, 511 debtor relief laws and, 135-36 derivative actions, constitutional questions and, 758 domicile for purposes of taxation and, 103-4 Due Process Clause and, 1049 economic regulation and, 1148 estate tax and, 58, 59, 60-62 FDR and, 501 on federalism, 491-92 federal jurisdiction and, 826, 827-28 federal unemployment tax and, 291-92 on foreign affairs, 490-92, 501 formalism and, 725 formulas and, 305-6 freedom of press and, 719-22, 724-25 in Gold Clause cases, 147-48, 154 Harding and, 25 in Herndon case, 711-13 ICC and, 92-93 immigration law and, 918-19 independent state grounds and, 833-34



INDEX

Sutherland, George (cont.) in "White Primary" cases, 652 intergovernmental tax immunity and, wiretapping and, 584 106, 263 interstate commerce and, 101-2 in Jones & Laughlin case, 283 in Jones v. SEC, 526, 528-32, 546 on judicial salaries, 158-59, 160 legal education of, 56 legal theory and, 56 "liberal" decisions by, 1148, 1152 liberty and, 557 life of, 24-25 in Macintosh case, 733-34 minimum wage and, 231-32 in Nebbia case, 142 NLRA and, 724-25 politics of, 2 in Powell v. Alabama, 625-27, 628, 1148, price regulation and, 162 prison-made goods in interstate commerce and, 220-21 professionalism and, 607-9 Prohibition and, 593-94 prosecutors and, 608 on public interest versus special interest, 43 rate-making and, 445-46, 447 recusals of, 448 removal of executive officials and, 478, 484-85, 487-88 Republican Party and, 24-25, 627 residence, 332-33 retirement of, 310, 317 in Schechter case, 196 Social Security Act and, 292 sovereign immunity and, 788 in Soviet nationalization cases, 507-8 standing and, 769, 770–71, 777–78 state income tax exemptions and, 203-4 statutory interpretation by, 79-81, 918-20, 927 Stone and, 25 Supreme Court Building and, 11 "switch in time" and, 303 taxpayer standing and, 208, 757, 770 Theodore Roosevelt and, 24-25 in Tipaldo case, 235-36 treaties, enforcement of Prohibition and, 588-89 on treaty power, 492 trucking industry, regulation of, 739-40 309 unconstitutional conditions and, 739-40 unemployment insurance and, 288 Van Devanter and, 20 vested rights and, 77 on war power, 491-92 in West Coast Hotel v. Parrish, 274

Sutherland, W.E., 710 Swan, Charles, 731 Swan, Thomas, 390-91, 506, 865 Sweet, Ossian, 322 Swift, Joseph, 855-56 Swift & Company, 520, 521 Swift v. Tyson diminishing of, 863-64 expansion of, 857-58 factual background, 855 general federal common law and, 856-57 lower court proceedings, 855-56 preexisting debts as valuable consideration, 856 Progressive critique of, 858, 859-60, Rules of Decision Act and, 856-57, 863, 870-71, 873 Swiren, Max, 994-96 "Switch in time" "atmospherics" of cases and, 302-3 Brandeis and, 303 Carter Coal Co. case and, 1154, 1155 changes in statutory drafting as alternative explanation, 300-2 continuity in cases casting doubt on, 307 Court-packing plan, opposition to casting doubt on, 300 docket books and, 1157-58 emergency powers and, 303-4 exaggeration of, 4 formulas and, 305-7 Frankfurter and, 1153 Frazier-Lemke Act and, 303, 304-5 historiography of, 1153-58 Hughes and, 4, 296, 299-301, 303-7, 308, 309-10, 1153, 1154, 1158 Hughes-Roberts visit and, 1154-57 interest group pluralism and, 310 Jones & Laughlin case and, 297, 300, 1154, 1155 legally relevant differences in statutes as alternative explanation, 303-7 liberals and, 296-97 McReynolds and, 303 narrow understanding of, 1153-54 new evidence regarding, 1154-58 political influence downplayed, 303, Roberts and, 4, 296-302, 304, 307-8, 309-10, 1153, 1158 Schechter case and, 1154 statistical analysis of, 308 Sutherland and, 303 timing aspects casting doubt on, 299-300



INDEX

Van Devanter and, 303 Tariff Act of 1930, 587-88 West Coast Hotel v. Parrish and, 296-97, Tariff Commission, 438 298-300, 304, 1153-54 Tariffs Systematic legal theory, 1152 nondelegation doctrine and, 437, 438 Prohibition and, 592, 594, 600-1 Tacoma Times, 481 Tarrant, John, 188 Taft, William Howard Tax Injunction Act of 1937, 383, 755-56 generally, 13, 188, 567 Taxation in ABA, 889 alcohol, national excise tax on, 201-2 "affected with a public interest" test and, 66, bank accounts, 361-62, 793 Declaratory Judgment Act and, 753, 754 67, 1162 automobile searches and seizures and, domicile for purposes of, 102-5 double taxation, 103-4, 105, 366 "boundary pricking" and, 305, 1149 electricity generation, excise taxes on, 101, Brandeis and, 24 262-63 business regulation and, 88 Equal Protection Clause and (See Equal Butler and, 25 Protection Clause) civil procedure reform and, 889 estate tax (See Estate tax) federal taxation of state employees, 397-99 civil service and, 475 at Conference, 339 federal unemployment tax, 289-92 on consensus, 333-34 fire insurance companies, 366-68 gasoline tax, Dormant Commerce Clause Dodge Lectures, 49 Harding and, 24 and, 375-77 Hoover and, 13 gift tax, 59-63 Hughes and, 16, 32 graduated gross receipts taxes, chain stores influence on appointments to Court, 24, 26 and, 960-63 interstate commerce and, 348, 1029-30 graduated license taxes, chain stores and, judges appointed by, 175, 946, 1085 957-60, 964-65 labor law and, 1080 gross income tax, Dormant Commerce Clause and, 374-75 McReynolds and, 22 minimum wage and, 231, 232, 305 income tax (See Income tax) nomination as chief justice, 25 intergovernmental tax immunity (See nondelegation doctrine and, 177 Intergovernmental tax immunity) Packers and Stockyards Act and, 280 interstate commerce, state taxation and, 264 as president, 14 of Native Americans, 884-85 removal of executive officials and, Privileges and Immunities Clause, state 478-80, 481 income tax exemptions and, 202, 203, Republican Party and, 11 retirement as chief justice, 13, 14, 28 Prohibition and, 592, 593-94 statutory interpretation by, 84 as regulation, 356-57 Stone and, 27-28, 335 sales and use taxes (See Sales and use taxes) severance tax, Equal Protection Clause Supreme Court Building and, 11 tariffs and, 438 and, 717 Van Devanter and, 20 state income tax exemptions, Equal wiretapping and, 578 Protection Clause and, 202-5, 363-64 Take Care Clause, removal of executive state taxation of federal employees, 399-400 officials and, 478, 480 taxpayer standing, 208, 211, 215-16, 757, Takings 770, 800 generally, 78 willful refusal to provide information, administrative law and, 441-43 statutory interpretation and, 923 Gold Clause cases and, 152 Taxing and spending power. See General Welfare Clause in Radford case, 189-90 standard of review, 523 Teapot Dome scandal, 27, 29, 113-14 substantive due process and, 441 Telephone rates, 447, 449 Takings Clause, 78, 523 Teller, Ludwig, 1112-13 Tamanaha, Brian, 36, 1150, 1151 Tennessee Taney, Roger, 161, 777, 948 diversity jurisdiction and, 859-60 Tariff Act of 1922, 587-88, 594, 596, 600-1 estate tax in, 365-66



INDEX

Tennessee (cont.)	"Third degree," 611–12
gasoline tax in, 753	Thirteenth Amendment, state ratification
taxation of interstate buses, 102	subsequent to rejection, 797
Tennessee Valley Authority (TVA)	Thomas, Norman, 1067, 1077
generally, 301, 640, 769	Thomas, Ralph, 135
Ashwander case (See Ashwander case)	Thomas, W.D., 135
competition and, 951, 952-53	Thompson, "Big Bill," 689–90
Congressional authority to create, 947–48,	Thompson, E.W., 382
949, 950	Thorne, M. Franklin, 1088–89
conservatives on, 951	Thornhill, Byron, 1096
derivative actions and, 757–58, 759–60,	Thornhill v. Alabama
945–46	briefs in Supreme Court, 1096–97
excess power, sale of, 944, 945–46, 949–51	defense strategy in, 1096
FDR and, 945	facial challenge in, 1097, 1098–99
General Welfare Clause and, 944–45	factual background, 1096
national defense and, 949, 950	government strategy in, 1096–97
national power, scope of, 948–49	incidental impact on freedom of speech and,
standing and, 768, 771–73, 944	1098
Tenth Amendment and, 951	interest group pluralism and, 1099–100
Tenth Amendment. See also Federalism	intimidation or coercion and, 1096–97, 1098
	labor picketing as speech, 1084, 1096,
Agricultural Adjustment Act and, 210 Ashwander case and, 947	1097–98
Butler case and, 210, 216–17, 218	majority opinion in, 1097–100
federal unemployment tax and, 289–91, 292 interstate transportation and, 353–54,	oral arguments in Supreme Court, 1097 Thrasher, Frederic, 607
	Three-judge courts, 843–45
355–56 Prohibition and, 112	"Throat of commerce" doctrine, 348, 352
Social Security Act and, 292	Throat of commerce docume, 348, 352 Thurston, Elliott, 163, 164
TVA and, 951	Tile Layers Protective Union, 1080–81
Tenure of Office Act, 479	Till, Irene, 980–81
Terrell, William Glenn, 643	Time Magazine
Texas	generally, 150
bankruptcy law and, 247	on antitrust law, 975
Cameron County Water Improvement	on Brown v. Mississippi, 640–41
District, 245–46	on Carter Coal Co. case, 225–26
choice of law and, 899–901	on Gold Clause cases, 165
Democratic Party in, 648–55	on Grosjean case, 722
diversity jurisdiction and, 880, 887–88	Tinney, Cal, 296
estate tax in, 330–31	Tipaldo, Joseph, 232–33, 236, 302
federal taxation of income from state leases	Tipaldo case
in, 108	Adkins case compared, 232–33, 234, 235,
"hot oil" in, 115–17, 927	236, 298, 304
Panama Refining case (See Panama Refining	briefs in Supreme Court, 233–34
case)	dissenting opinions in, 234–36
petroleum industry in, 178	docket books and, 1157
Pullman Co. case (See Pullman Co. case)	economic conditions and, 234
Railroad Commission, 115–16, 179, 383–88,	factual background, 232–33
814–18, 819, 821	freedom of contract and, 235
trucking industry, regulation of, 99–100, 101	government strategy in, 233–34
"White primary" in, 649, 650, 653–54 (See	lower court proceedings, 232–33
also "White Primary" cases)	majority opinion in, 234
Texas, University of, 470, 818, 872	reaction to, 236
Texas and New Orleans Railroad, 85	value of services versus cost of living,
Thacher, Thomas, 454–55, 581, 600, 731,	233-34
936, 973	Title to property, Contracts Clause and,
Thematic approach, xv	404, 405
Theology as an Empirical Science	Tobacco industry
(Macintosh), 730	auctions, 347–51
* * * * * * * * * * * * * * * * * * *	= :: =



INDEX

interest group pluralism and, 351-52 interstate commerce and, 347-51 Tobacco Inspection Act of 1935, 348, 349, 351-52, 354, 359 Tompkins, Harry, 851-52, 864, 865, 874 Tortious interference with contractual opportunities, 778 Townsend, Francis, 209 "Townsend Plan," 209 Trade associations, 976-79 Trading with the Enemy Act, 146-47 Transportation Act of 1920, 94-95 The Treason of the Senate (Philips), 43-44, 1045 Treasury Department, 433, 588 Treaties president, treaty power, 492 Prohibition enforcement and, 587–88 Trolley rates, 445-46 Trucking industry emergence of regulation, 96-97 formulas versus "conceptions of basic needs" in, 96-100 ICC and, 378-79 preemption and, 378-79 public utilities compared, 96-97 unconstitutional conditions in, 738-40 weight limits, Dormant Commerce Clause and, 408-9 Truman, Harry, 571-72, 805 Tugwell, Rexford, 520, 533 Tuttle, Charles H., 1037, 1038 Tuttle, Elbert, 710, 713 TVA. See Tennessee Valley Authority (TVA) Tweed, "Boss," 30-31 Twin City Reporter (newspaper), 691 Tyler, Ida, 58-59 Tyler, James, 58-59 Tyson, George, 855-56 Unconstitutional conditions generally, 737 corporations and, 738 in Hamilton case, 743

Unconstitutional conditions generally, 737
corporations and, 738
in Hamilton case, 743
in Macintosh case, 737–38
in trucking industry, 738–40
Unemployed Councils, 707
Unemployment insurance
Alton Railroad case compared, 288–89
"common fund" and, 288–89
federal unemployment tax, 289–92
General Welfare Clause and, 307
integrated state–federal schemes, 288–89
legislation regarding, 209–10
"pooling" and, 288–89
Unfair competition
federal jurisdiction and, 825–26
FTC and, 171, 194, 195–96

Schechter case and, 194, 195-96, 197, 198 Sherman Antitrust Act and, 354 Unfair labor practices bargaining units and, 1015 company unions as, 1009-10 Fansteel case and, 994-95, 998-99 freedom of contract and, 989 in Jones & Laughlin case, 279, 285 NLRA, under, 276 NLRB and, 390, 391, 394 Unincorporated associations, standing and, 766 Union Electric Company, 1017 Unions. See also specific union Clayton Act and, 1032 Communist Party and, 1014 company unions (See Company unions) craft unions, 172 criminal violations by, 1036-41 (See also Hutcheson case) as FDR constituency, 1043-44 secondary boycotts, 1028-29 Sherman Antitrust Act, under, 1028, 1032, 1033-35 strikes (See Strikes) United Automobile Workers, 323 United Electrical and Radio Workers, 390, 391, 524, 1009 United Kingdom "destroyers-for-bases" deal, 509-10 Germany, war with, 509 Neutrality Acts and, 494 Treaty with US, enforcement of Prohibition and, 587-88 United Mineworkers, 15, 223 United Shipyards, 845 United States Employees' Compensation Commission, 451-52 United States Geological Survey, 113 United States Reports, 336-37 United States Steel Company, 279, 987, 1001 United Steel Workers, 287, 987 Universities. See Colleges and universities; specific institution University of Pennsylvania Law Review, 712 Urban League, 804 Urner-Barry (poultry quotation service), 192 Urofsky, Melvin, 610 Utah electricity generation, excise taxes on, 101 income tax in, 839-40 polygamy in, 728 Utilities. See Public utilities Van Cott, W.Q., 839, 840 Vanderbilt, Arthur, 540-41, 1071

1235

Van Devanter, Dollie, 20-21, 119, 313

Van Devanter, Willis

generally, 38



INDEX

Van Devanter, Willis (cont.)	state income tax exemptions, Equal
"affected with a public interest" test and,	Protection Clause and, 202-5
69–70, 71	workers' compensation in, 901-2, 903-5
in Ashwander case, 951	Vertical forum-shopping, 910
as associate justice, 20	Vested rights
"bank holiday" and, 146, 944	Contracts Clause and, 75, 77
in Blaisdell case, 131, 134	Due Process Clause and, 75
Brandeis and, 20, 21	formalism and, 76
business regulation and, 89	formulas and, 75-77
Butler and, 25	Legal Realism and, 76, 77
Cardozo and, 30	Veterans' pensions, 433
congratulatory letters and, 333	Veto power, 510
consideration for chief justice, 13	Villanova University, 192–93
Court-packing plan and, 252, 257	Viosca, Rene, 659–60, 661
derivative actions, constitutional questions	Virginia
and, 758	creditors' rights in, 293-94
federal unemployment tax and, 291	state officers, suits against, 790
finances of, 119	taxation of insurance companies, Equal
in Gold Clause cases, 147-48, 149, 154	Protection Clause and, 367–68
in Herndon case, 714	Virginia, University of, 56, 207–8, 317, 1140
Holmes and, 19	Virginia Bar Association, 293–94
Hughes and, 20	Virginia Law Review, 1123
inter-chambers materials and, xiv	Volpe, Anthony, 915–16
intergovernmental tax immunity and,	Volpe, Frank A., 1047
107	Volstead Act, 588, 592–97, 601, 604, 605
interstate commerce and, 220–21	Vrooman, Vernon, 125
on judicial salaries, 159	
legal education of, 56	Wage and Hour Division, 544
legal theory and, 56	Wages and hours
life of, 19–20	Carter Coal Co. case and, 226, 227,
in Nebbia case, 142	229–30, 356
opinion writing and, 20	child labor, Commerce Clause and, 795
Parker and, 28	maximum hours laws, 554–55
in Powell v. Alabama, 625	minimum wage (See Minimum wage)
Republican Party and, 20	prevailing wages (See Prevailing wages)
residence of, 332–33	Wagner, Frank D., 336–37
retirement of, 2, 6, 21, 259–61, 310, 313–14,	Wagner, Robert, 172, 173, 209–10, 237, 276,
315, 317, 448, 1158	287, 952, 986, 1015
Roberts and, 29	Wagner Act. See National Labor Relations Act
Social Security Act and, 292	(NLRA)
sovereign immunity and, 788	Waite, Morrison, 63, 65, 729
on stare decisis, 37	Waite, W.C., 139
Sutherland and, 20	"Waiting for Lefty" (play), 1143
"switch in time" and, 303	Wakefield, Lowell, 619
Taft and, 20	Walker, Guy, 603–4
Theodore Roosevelt and, 20	Walker, Paul, 603–4
in "White Primary" cases, 652	Walker, Wilfred, 1051
Van Orsdel, Josiah, 1090–91	Wall Street Journal
Van Sant, Grant, 119	on Ashwander case, 760, 773
Vanzetti, Bartolomeo, 319, 320, 617–18, 619,	on freedom of speech, 1063
	on Morgan cases, 538
Venue	Wallace, Henry, 346, 520, 521, 524, 533–39.
	See also Morgan cases
generally, 845–47 federalism and, 847	Waller, Spencer, 983
Frankfurter on, 845, 846–47	Walsh, Thomas, 114, 889
Vermont	Walsh-Healey Act. <i>See</i> Public Contracts Act of
income tax in, 202–5	•
purchases on New York milk in, 343–45	1935 Walter, Francis, 544
parenases on frew folk lillik III, 343–45	11 and 1 1 and 15, 344



INDEX

reaction to, 275 Walter-Logan Bill, 544-45 Wambaugh, Eugene, 735-36 "switch in time" and, 296–97, 298–300, 304, Wann, M.L., 615 1153-54 Ward, Artemus, 337 unconscionability and, 275 War Department, 726 unequal bargaining power and, 274-75 West Virginia War power, 491-92 Warren, Charles, 207-8, 559, 695, 863, 869, chain stores in, 960, 963-64 estate tax in, 58-59 870-71, 872-73 Warren, Samuel, 23 Westbrooks, Richard, 671, 672, 675 Washington, D.C. See District of Columbia Western Union, 989-90 Washington, George, 800 Westwood, Howard, 126 Washington (State) Wheat, Alexander, 237, 240 gross income tax in, 373, 374-75 Wheeler, Burton K., 256, 257, 972 Wheeling Railroad, 765-66 minimum wage in, 231, 236, 272, 273, White, Bob, 646-47 274-75, 342 (See also West Coast Hotel v. Parrish) White, Edward Douglass, 25, 660, 861, 899 Washington Post White, G. Edward, 3-4, 134-35, 304, 305, on Ashwander case, 950, 951 1149-50, 1162-63 White, M.A., 589 on Blaisdell case, 134, 163 on Brown v. Mississippi, 641 White, Thomas W., 149 on Butler case, 219 White, Walter, 620-21 "White Primary" cases Court-packing plan and, 254 on Curtiss-Wright case, 501 generally, 659 on Frankfurter, 320 Classic case compared, 663, 666 Democratic Party and, 649, 650-51, on Gold Clause cases, 149 on Nebbia case, 164 on New Negro Alliance case, 1089 Fifteenth Amendment and, 651 on Sutherland, 531-32 Fourteenth Amendment and, 650 Washingtonian (magazine), 916-17 interest group pluralism and, 653 Watson, Morris, 723 liberty and, 655 W.B. Worthen Company, 135 NAACP and, 649, 650 Webber, Abraham, 1047 reaction to, 653, 655-57 Webster, Clarence, 495, 496 state action requirement and, 650-52, Webster, Daniel, 1129 654-55 Wechsler, Herbert, 661, 710, 748-49, statutory basis, 649 782-83 voluntary associations and, 652-53, Weems, Charles, 616, 633 654-55 Weiden, David, 337 Whitman College, 320 Weinrib, Laura M., 618 Whitney, Anita, 682-83, 684 Weinstein, Lewis, H., 1047-48 Whitney, Dorothy Payne, 44 Wells, Hugh, 495-96 Wickersham, George, 24, 567 Wesley, Carter, 646, 648, 650, 651, 654 Wickersham Commission, 567-68, 611-12, West Coast Hotel v. Parrish 624, 636, 640, 645, 854-55 Wiecek, William M., 1149 generally, 293 briefs in Supreme Court, 272-73 Wigmore, John, 82, 736, 1056 dissenting opinion in, 274 Wilbur, Curtis Dwight, 990 docket books and, 1157 Willebrandt, Mabel Walker, 59 Due Process Clause and, 273 William and Mary, College of, 553 economic conditions and, 273-74 Williams, Eugene, 616, 622 Williams, G. Mennen, 633 factual background, 272 freedom of contract and, 273 Williams, John, 847-48 government strategy in, 272-73 Williams College, 1088 lower court proceedings, 272 Williamson, Jack, 642-43, 646 majority opinion in, 273-74 Willis-Campbell Act, 593-94, 600 minimum wage and, 272, 273-74 Willkie, Wendell, 760 national power in, 342-43 Wilson, Angus, 55 as overruling Adkins case, 272-75, 297, Wilson, Samuel, 124 Wilson, Scott, 210 298-300, 304



INDEX

administrative law and, 443-44 Wilson, Woodrow generally, 318, 527, 681, 689-90, 769 choice of law and, 902-8 Crowell v. Benson and, 457 Brandeis and, 22, 23-24 civil service and, 476 Longshoremen's and Harbor Workers' Frankfurter and, 319 Compensation Act, 451, 456 Humphrey and, 481 railroad pension plans compared, 243 internationalism and, 493 scope of review in post-Erie cases, 881-82 judges appointed by, 38, 410-11, 453, 520, United States Employees' Compensation 521, 816, 946-47, 1031 Commission, 451-52 League of Nations and, 493, 501 Workers' Defense League, 1032-33, 1077, McReynolds and, 21-22 1118 World War I Wilson & Company, 891 Wilson Dam, 758, 944, 945, 946-47, 949, 950 freedom of speech and, 679, 680 Window Glass Cutters League of America, Progressives on, 561-62 1016-17 Wright, Andy, 616 Winter, Steven, 762-63 Wright, Benjamin F., Jr., 123, 130, 1140 Wright, Orville, 494 Wiretapping, 578-79, 581-87 Wright, Robert, 293 compulsory military training in, 727 Wright, Roy, 616 dividends, income tax deduction for, 363, Wright, Wilbur, 494 368, 369 Wrongful death, 902 Wyzanski, Charles E., 4-5, 172-73, 283, 297, income tax in, 61 labor picketing in, 417, 1080-81, 1083-85 321, 530, 551, 564, 723, 935, 1155-57 "little Norris-LaGuardia act," 1081, 1082, Yale College, 1052-53 1083-84, 1087 milk industry in, 1101 Yale Divinity School, 730 unemployment insurance in, 209 Yale Law Journal on administrative law, 524 Wisconsin, University of, 315, 470-71, 1079, on Child Labor Amendment (proposed), 801 on Crowell v. Benson, 465-66 Wisconsin State Federation of Labor, 1082 Witte, Edwin, 209, 1078-79 on Hague v. CIO, 1069 Woeste, Victoria Saker, 140 on jurisdictional amount, 823 on "White Primary" cases, 653 Yale Law School, 33, 63, 296, 320–21, 390–91, Wolff, Tobias Barrington, 878 Wood, Frederick H., 174, 193, 194, 196, 199, 226, 227-28, 533, 635 392, 547, 731, 827, 870, 890, 1123 Wood, J.H., 404, 405 Yale University, 49, 317, 730 Wood, Lewis, 400, 419-20 Young, Brigham, 728 Wood, Raymond, 573 Young, Edward T., 791 Woodward, Walter, 642-43, 646 Younger, Irving, 864, 865 Work Projects Administration, 757 Youth's Companion (magazine), 1126 Works Progress Administration, 474 Workers' compensation Zackin, Emily, 121