"The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State."

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"While our country remains untainted with the principles and manners which are now producing desolation in so many parts of the world; while she continues sincere, and incapable of insidious and impious policy, we shall have the strongest reason to rejoice in the local destination assigned us by Providence. But should the people of America once become capable of that deep simulation towards one another, and towards foreign nations, which assumes the language of justice and moderation while it is practising iniquity and extravagance, and displays in the most captivating manner the charming pictures of candor, frankness, and sincerity, while it is rioting in rapine and insolence, this country will be the most miserable habitation in the world; because we have no government armed with power capable of contending with human passions unbridled by morality and religion. Avarice, ambition, revenge, or gallantry, would break the strongest cords of our Constitution as a whale goes through a net. Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other."

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"But, the Supreme Court never ventured into the issues of redistribution of wealth, and of more basic issues such as political and economic justice in society. To that extent, as radical as I think people try to characterize the Warren Court, it wasn't that radical. It didn't break free from the essential constraints that were placed by the Founding Fathers in the Constitution, at least as it's been interpreted, and the Warren Court interpreted in the same way, that generally the Constitution is a charter of negative liberties. Says what the states can't do to you. Says what the federal government can't do to you, but doesn't say what the federal government or state government must do on your behalf.

"And that hasn't shifted and one of the, I think, tragedies of the civil rights movement was because the civil rights movement became so court-focused I think there was a tendency to lose track of the political and community organizing and activities on the ground that are able to put together the actual coalition of powers through which you bring about redistributive change. In some ways we still suffer from that."

From a WBEZ (Chicago Public Radio) interview with IL State Senator Obama in 2001

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"If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their WILL to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

"Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental."

Alexander Hamilton, on the supremacy of the Constitution, in Federalist # 78 (June 14, 1788)

"The power of this court is in many cases superior to that of the legislature. I have showed, in a former paper, that this court will be authorised to decide upon the meaning of the constitution; and that, not only according to the natural and obvious meaning of the words, but also according to the spirit and intention of it. In the exercise of this power they will not be subordinate to, but above the legislature. For all the departments of this government will receive their powers, so far as they are expressed in the constitution, from the people immediately, who are the source of power. The legislature can only exercise such powers as are given them by the constitution; they cannot assume any of the rights annexed to the judicial; for this plain reason, that the same authority which vested the legislature with their powers, vested the judicial with theirs. Both are derived from the same source; both therefore are equally valid, and the judicial hold their powers independently of the legislature, as the legislature do of the judicial. The supreme court then have a right, independent of the legislature, to give a construction to the constitution and every part of it, and there is no power provided in this system to correct their construction or do it away. If, therefore, the legislature pass any laws, inconsistent with the sense the judges put upon the constitution, they will declare it void; and therefore in this respect their power is superior to that of the legislature. In England the judges are not only subject to have their decisions set aside by the house of lords, for error, but in cases where they give an explanation to the laws or constitution of the country contrary to the sense of the parliament -though the parliament will not set aside the judgment of the court-yet, they have authority, by a new law, to explain the former one, and by this means to prevent a reception of such decisions. But no such power is in the legislature. The judges are supreme and no law, explanatory of the constitution, will be binding on them.

"When great and extraordinary powers are vested in any man, or body of men, which in their exercise, may operate to the oppression of the people, it is of high importance that powerful checks should be formed to prevent the abuse of it."

Robert Yates, warning about the unrestrained powers of the supreme judiciary, in Anti-Federalist # 78

Marbury vs. Madison (1803)

Decided 4-0. Defined the Constitutional role of the Judiciary.

"It is emphatically the duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret the rule. If two laws conflict with each other, the Court must decide on the operation of each.

"If courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply…

"Those, then, who controvert the principle that the Constitution is to be considered in court as a paramount law are reduced to the necessity of maintaining that courts must close their eyes on the Constitution, and see only the law.

"This doctrine would subvert the very foundation of all written Constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that, if the Legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the Legislature a practical and real omnipotence with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.

"That it thus reduces to nothing what we have deemed the greatest improvement on political institutions -- a written Constitution, would of itself be sufficient, in America where written Constitutions have been viewed with so much reverence, for rejecting the construction. But the peculiar expressions of the Constitution of the United States furnish additional arguments in favour of its rejection.

"The judicial power of the United States is extended to all cases arising under the Constitution.

"Could it be the intention of those who gave this power to say that, in using it, the Constitution should not be looked into? That a case arising under the Constitution should be decided without examining the instrument under which it arises?

"This is too extravagant to be maintained.

"In some cases then, the Constitution must be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read or to obey?"

Church of the Holy Trinity vs. the United States (1892)

Decided 9-0. Identified the unique, Christian heritage of the United States.

But, beyond all these matters, no purpose of action against religion can be imputed to any legislation, state or national, because this is a religious people. This is historically true. From the discovery of this continent to the present hour, there is a single voice making this affirmation…

[Many examples then given from official documents…]

There is no dissonance in these declarations. There is a universal language pervading them all, having one meaning. They affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations of private persons. They are organic utterances. They speak the voice of the entire people. While, because of a general recognition of this truth, the question has seldom been presented to the courts, yet we find that in *Updegraph v. Commonwealth,* it was decided that

"Christianity, general Christianity, is, and always has been, a part of the common law of Pennsylvania; . . . not Christianity with an established church and tithes and spiritual courts, but Christianity with liberty of conscience to all men."

And in *People v. Ruggles,* Chancellor Kent, the great commentator on American law, speaking as Chief Justice of the Supreme Court of New York, said:

"The people of this state, in common with the people of this country, profess the general doctrines of Christianity as the rule of their faith and practice, and to scandalize the author of these doctrines is not only, in a religious point of view, extremely impious, but, even in respect to the obligations due to society, is a gross violation of decency and good order. . . . The free, equal, and undisturbed enjoyment of religious opinion, whatever it may be, and free and decent discussions on any religious subject, is granted and secured; but to revile, with malicious and blasphemous contempt, the religion professed by almost the whole community is an abuse of that right. Nor are we bound by any expressions in the Constitution, as some have strangely supposed, either not to punish at all, or to punish indiscriminately the like attacks upon the religion of Mahomet or of the Grand Lama, and for this plain reason, that the case assumes that we are a Christian people, and the morality of the country is deeply engrafted upon Christianity, and not upon the doctrines or worship of those impostors."

And in the famous case of *Vidal vs. Girard's Executors*, this Court, while sustaining the will of Mr. Girard, with its provision for the creation of a college into which no minister should be permitted to enter, observed: "It is also said, and truly, that the Christian religion is a part of the common law of Pennsylvania."

If we pass beyond these matters to a view of American life, as expressed by its laws, its business, its customs, and its society, we find every where a clear recognition of the same truth. Among other matters, note the following: the form of oath universally prevailing, concluding with an appeal to the Almighty; the custom of opening sessions of all deliberative bodies and most conventions with prayer; the prefatory words of all wills, "In the name of God, amen;" the laws respecting the observance of the Sabbath, with the general cessation of all secular business, and the closing of courts, legislatures, and other similar public assemblies on that day; the churches and church organizations which abound in every city, town, and hamlet; the multitude of charitable organizations existing every where under Christian auspices; the gigantic missionary associations, with general support, and aiming to establish Christian missions in every quarter of the globe. These, and many other matters which might be noticed, add a volume of unofficial declarations to the mass of organic utterances that this is a Christian nation. In the face of all these, shall it be believed that a Congress of the United States intended to make it a misdemeanor for a church of this country to contract for the services of a Christian minister residing in another nation?

Missouri vs. Holland (1920)

Decided 7-2. Determined that Federal treaties always trump Tenth Amendment States' rights.
A Missouri law regarding the hunting of migratory birds was overturned by the U. S. Supreme Court.

The case is particularly significant because of what Justice Oliver Wendell Holmes, Jr. (1902-1932, appointed by T. Roosevelt) wrote regarding the concept of a "living constitution" in his lengthy concurrence.

"With regard to that we may add that when we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it has taken a century and has cost their successors much sweat and blood to preserve that they created a nation. The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago. The treaty in question does not contravene any prohibitory words to be found in the Constitution. The only question is whether it is forbidden by some invisible radiation from the general terms of the Tenth Amendment. We must consider what this country has become in deciding what that amendment has reserved."

Cantwell vs. Connecticut (1940)

Decided 9-0. First-time application of the 1st Amendment (via the 14th)[1] to actions by a State.
A unanimous decision of the CT Supreme Court was overturned by the U.S. Supreme Court.

Justice Owen Roberts (1930-1945, appointed by Herbert Hoover) wrote, "to condition the solicitation of aid for the perpetuation of religious views or systems upon a license, the grant of which rests in the exercise of a determination by state authority as to what is a religious cause, is to lay a forbidden burden upon the exercise of liberty protected by the Constitution."

Everson vs. Board of Education (1947)

Decided 5-4. First-time misapplication[2] of Jefferson's "separation between Church and State" remark.
New Jersey law was overturned by the U.S. Supreme Court.

NJ had decided to provide state funding for transportation of students to any school, including private Christian schools. A taxpayer, Mr. Everson, complained that this was a violation of the First Amendment. Everson lost his case throughout the NJ court system, but then appealed to the U.S. Supreme Court. Justice Hugo Black (1927-1937, appointed by FDR) wrote for the majority.

"The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.'"

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[1] Based on the middle clause of Section One in the Fourteenth Amendment - "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;"
[2] In my opinion.

Abington vs. Schempp/Murray[3] vs. Curlett (1963)

Decided 8-1. This decision banned Bible reading in public schools.[4]

Justice William Brennan (1956-1990, appointed by Eisenhower) had much to say in his concurrence.

"A too literal quest for the advice of the Founding Fathers upon the issues of these cases seems to me futile and misdirected for several reasons: First, on our precise problem the historical record is at best ambiguous, and statements can readily be found to support either side of the proposition. The ambiguity of history is understandable if we recall the nature of the problems uppermost in the thinking of the statesmen who fashioned the religious guarantees; they were concerned with far more flagrant intrusions of government into the realm of religion than any that our century has witnessed. While it is clear to me that the Framers meant the Establishment Clause to prohibit more than the creation of an established federal church such as existed in England, I have no doubt that, in their preoccupation with the imminent question of established churches, they gave no distinct consideration to the particular question whether the clause also forbade devotional exercises in public institutions.

"Second, the structure of American education has greatly changed since the First Amendment was adopted. In the context of our modern emphasis upon public education available to all citizens, any views of the eighteenth century as to whether the exercises at bar are an "establishment" offer little aid to decision. Education, as the Framers knew it, was in the main confined to private schools more often than not under strictly sectarian supervision. Only gradually did control of education pass largely to public officials. It would, therefore, hardly be significant if the fact was that the nearly universal devotional exercises in the schools of the young Republic did not provoke criticism; even today religious ceremonies in church-supported private schools are constitutionally unobjectionable.

"Third, our religious composition makes us a vastly more diverse people than were our forefathers. They knew differences chiefly among Protestant sects. Today the Nation is far more heterogeneous religiously, including as it does substantial minorities not only of Catholics and Jews but as well of those who worship according to no version of the Bible and those who worship no God at all. See *Torcaso v. Watkins*. In the face of such profound changes, practices which may have been objectionable to no one in the time of Jefferson and Madison may today be highly offensive to many persons, the deeply devout and the nonbelievers alike.

"Whatever Jefferson or Madison would have thought of Bible reading or the recital of the Lord's Prayer in what few public schools existed in their day, our use of the history of their time must limit itself to broad purposes, not specific practices. By such a standard, I am persuaded, as is the Court, that the devotional exercises carried on in the Baltimore and Abington schools offend the First Amendment because they sufficiently threaten in our day those substantive evils the fear of which called forth the Establishment Clause of the First Amendment. It is "a constitution we are expounding," and our interpretation of the First Amendment must necessarily be responsive to the much more highly charged nature of religious questions in contemporary society.

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[3] The petitioner on this bundled case was the famous atheist, Madelyn Murray O'Hair.

[4] During the previous year (1962), in **Engel vs. Vitale**, on a 6-1 vote, the U.S. Supreme Court had struck down a New York law which had composed a non-sectarian prayer – "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country. Amen." - to be offered at the beginning of each school day. The summary of the decision reads: "Because of the prohibition of the First Amendment against the enactment of any law 'respecting an establishment of religion,' which is made applicable to the States by the Fourteenth Amendment, state officials may not compose an official state prayer and require that it be recited in the public schools of the State at the beginning of each school day -- even if the prayer is denominationally neutral and pupils who wish to do so may remain silent or be excused from the room while the prayer is being recited."

"Fourth, the American experiment in free public education available to all children has been guided in large measure by the dramatic evolution of the religious diversity among the population which our public schools serve. The interaction of these two important forces in our national life has placed in bold relief certain positive values in the consistent application to public institutions generally, and public schools particularly, of the constitutional decree against official involvements of religion which might produce the evils the Framers meant the Establishment Clause to forestall. The public schools are supported entirely, in most communities, by public funds - funds exacted not only from parents, nor alone from those who hold particular religious views, nor indeed from those who subscribe to any creed at all. It is implicit in the history and character of American public education that the public schools serve a uniquely public function: the training of American citizens in an atmosphere free of parochial, divisive, or separatist influences of any sort - an atmosphere in which children may assimilate a heritage common to all American groups and religions. See Illinois ex rel. *McCollum v. Board of Education*. This is a heritage neither theistic nor atheistic, but simply civic and patriotic. See *Meyer v. Nebraska*.

"Attendance at the public schools has never been compulsory; parents remain morally and constitutionally free to choose the academic environment in which they wish their children to be educated. The relationship of the Establishment Clause of the First Amendment to the public school system is preeminently that of reserving such a choice to the individual parent, rather than vesting it in the majority of voters of each State or school district. The choice which is thus preserved is between a public secular education with its uniquely democratic values, and some form of private or sectarian education, which offers values of its own. In my judgment the First Amendment forbids the State to inhibit that freedom of choice by diminishing the attractiveness of either alternative - either by restricting the liberty of the private schools to inculcate whatever values they wish, or by jeopardizing the freedom of the public schools from private or sectarian pressures. The choice between these very different forms of education is one - very much like the choice of whether or not to worship - which our Constitution leaves to the individual parent. It is no proper function of the state or local government to influence or restrict that election. The lesson of history - drawn more from the experiences of other countries than from our own - is that a system of free public education forfeits its unique contribution to the growth of democratic citizenship when that choice ceases to be freely available to each parent."

Justice Potter Stewart (1958-1981, also appointed by Eisenhower) was the lone dissenter.

"It is, I think, a fallacious oversimplification to regard the [religion clauses] as establishing a single constitutional standard of "separation of church and state", which can be applied in every case to delineate the required boundaries between government and religion.... As a matter of history, the First Amendment was adopted solely as a limitation upon the newly created National Government. The events leading to its adoption strongly suggest that the Establishment Clause was primarily an attempt to insure that Congress not only would be powerless to establish a national church, but would also be unable to interfere with existing state establishments. ... So matters stood until the adoption of the Fourteenth Amendment, or more accurately, until this Court's decision in *Cantwell*...."

"If religious exercises are held to be an impermissible activity in schools, religion is placed in an artificial and state-created disadvantage.... And a refusal to permit religious exercises thus is seen, not as the realization of state neutrality, but rather as the establishment of a religion of secularism, or at least, as governmental support of the beliefs of those who think that religious exercises should be conducted only in private"

The Current Legal Standard = "The Lemon Test"[5]

1. Any law or statute must have a secular purpose.
2. The purpose of the law or statute can't promote or inhibit any religion of any sort.
3. The law or statute can't foster "excessive government entanglement" with any religion.

[5] As formulated in ***Lemon v. Kurtzman* (1971).** Decided 8-1.

California's Family Law Act of 1969 (Effective January 1, 1970)

Signed into law by Governor Ronald Reagan (divorced by Jane Wyman in 1949).

This law began the no-fault divorce avalanche within the U.S. By 1977, nine states allowed no-fault divorces. By 1983, all but SD & NY were no-fault divorce states. Today all states, districts & territories of the U. S. permit no-fault divorce.

According to U. S. Census Bureau statistics, in the year 1900 less than 1/10 of 1 % of men & women had been divorced. By 1950 the figure had grown to around 1 %. In 1980, after the introduction of the no-fault divorce concept, 4.5 % of men had been divorced & nearly 7% of the women. In 2000 the reported figures were 9 % of the men & 12 % of the women.

According to recent studies done by the Enrichment Journal:

- The divorce rate in America for first marriage is 41%
- The divorce rate in America for second marriage is 60%
- The divorce rate in America for third marriage is 73%

Cohabitation in the United States

From the online *Encyclopedia of Everyday Law*: "In 1970, about 530,000 couples reportedly lived together outside marriage. This number increased to 1.6 million in 1980, 2.9 million in 1990, 4.2 million in 1998, and 5.5 million in 2000.

"Laws prohibiting cohabitation and sexual relations outside marriage were very common until about the1970s. Though most of these laws have been repealed or are no longer enforced, they still exist in some state statutes. Eight states still have laws prohibiting cohabitation, which is usually defined as two individuals living together as husband and wife without being legally married. Nine states prohibit fornication, which is usually defined as consensual sexual intercourse outside marriage."

The National Institute of Child Health & Human Development reported that "Cohabitation, once rare, is now the norm: The researchers found that more than half (54 percent) of all first marriages between 1990 and 1994 began with unmarried cohabitation. They estimate that a majority of young men and women of marriageable age today will spend some time in a cohabiting relationship. ... Cohabiting relationships are less stable than marriages and that instabililty is increasing, the study found."

Readily Available Cohabitation Facts:

- Living together is considered to be more stressful than being married.
- Just over 50% of first cohabiting couples ever get married.
- U.S. & U.K. couples who live together are at a greater risk for divorce than non-cohabiting couples.
- Couples who lived together before marriage tend to divorce early in their marriage. If their marriage lasts seven years, then their risk for divorce is the same as couples who didn't cohabit before marriage.

Roe vs. Wade (1973)

Decided 7-2. This decision resulted in the legalized abortion.
The U.S. Supreme Court overturned abortion restriction laws in all 50 states.

The majority of the court deemed abortion a "fundamental right" protected by the Constitution. Justice Harry Blackmun (1970-1994, appointed by Nixon), writing for the majority, asserted that a "right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."

The dissenting justices saw it as "an improvident and extravagant exercise of the power of judicial review that the Constitution extends to this Court."

"The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State."

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"While our country remains untainted with the principles and manners which are now producing desolation in so many parts of the world; while she continues sincere, and incapable of insidious and impious policy, we shall have the strongest reason to rejoice in the local destination assigned us by Providence. But should the people of America once become capable of that deep simulation towards one another, and towards foreign nations, which assumes the language of justice and moderation while it is practising iniquity and extravagance, and displays in the most captivating manner the charming pictures of candor, frankness, and sincerity, while it is rioting in rapine and insolence, this country will be the most miserable habitation in the world; because we have no government armed with power capable of contending with human passions unbridled by morality and religion. Avarice, ambition, revenge, or gallantry, would break the strongest cords of our Constitution as a whale goes through a net. Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other."

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"But, the Supreme Court never ventured into the issues of redistribution of wealth, and of more basic issues such as political and economic justice in society. To that extent, as radical as I think people try to characterize the Warren Court, it wasn't that radical. It didn't break free from the essential constraints that were placed by the Founding Fathers in the Constitution, at least as it's been interpreted, and the Warren Court interpreted in the same way, that generally the Constitution is a charter of negative liberties. Says what the states can't do to you. Says what the federal government can't do to you, but doesn't say what the federal government or state government must do on your behalf.

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"Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental."

Alexander Hamilton, on the supremacy of the Constitution, in Federalist # 78 (June 14, 1788)

"The power of this court is in many cases superior to that of the legislature. I have showed, in a former paper, that this court will be authorised to decide upon the meaning of the constitution; and that, not only according to the natural and obvious meaning of the words, but also according to the spirit and intention of it. In the exercise of this power they will not be subordinate to, but above the legislature. For all the departments of this government will receive their powers, so far as they are expressed in the constitution, from the people immediately, who are the source of power. The legislature can only exercise such powers as are given them by the constitution; they cannot assume any of the rights annexed to the judicial; for this plain reason, that the same authority which vested the legislature with their powers, vested the judicial with theirs. Both are derived from the same source; both therefore are equally valid, and the judicial hold their powers independently of the legislature, as the legislature do of the judicial. The supreme court then have a right, independent of the legislature, to give a construction to the constitution and every part of it, and there is no power provided in this system to correct their construction or do it away. If, therefore, the legislature pass any laws, inconsistent with the sense the judges put upon the constitution, they will declare it void; and therefore in this respect their power is superior to that of the legislature. In England the judges are not only subject to have their decisions set aside by the house of lords, for error, but in cases where they give an explanation to the laws or constitution of the country contrary to the sense of the parliament -though the parliament will not set aside the judgment of the court-yet, they have authority, by a new law, to explain the former one, and by this means to prevent a reception of such decisions. But no such power is in the legislature. The judges are supreme and no law, explanatory of the constitution, will be binding on them.

"When great and extraordinary powers are vested in any man, or body of men, which in their exercise, may operate to the oppression of the people, it is of high importance that powerful checks should be formed to prevent the abuse of it."

Robert Yates, warning about the unrestrained powers of the supreme judiciary, in Anti-Federalist # 78

Marbury vs. Madison (1803)

Decided 4-0. Defined the Constitutional role of the Judiciary.

"It is emphatically the duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret the rule. If two laws conflict with each other, the Court must decide on the operation of each.

"If courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply…

"Those, then, who controvert the principle that the Constitution is to be considered in court as a paramount law are reduced to the necessity of maintaining that courts must close their eyes on the Constitution, and see only the law.

"This doctrine would subvert the very foundation of all written Constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that, if the Legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the Legislature a practical and real omnipotence with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.

"That it thus reduces to nothing what we have deemed the greatest improvement on political institutions -- a written Constitution, would of itself be sufficient, in America where written Constitutions have been viewed with so much reverence, for rejecting the construction. But the peculiar expressions of the Constitution of the United States furnish additional arguments in favour of its rejection.

"The judicial power of the United States is extended to all cases arising under the Constitution.

"Could it be the intention of those who gave this power to say that, in using it, the Constitution should not be looked into? That a case arising under the Constitution should be decided without examining the instrument under which it arises?

"This is too extravagant to be maintained.

"In some cases then, the Constitution must be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read or to obey?"

Church of the Holy Trinity vs. the United States (1892)

Decided 9-0. Identified the unique, Christian heritage of the United States.

But, beyond all these matters, no purpose of action against religion can be imputed to any legislation, state or national, because this is a religious people. This is historically true. From the discovery of this continent to the present hour, there is a single voice making this affirmation…

[Many examples then given from official documents…]

There is no dissonance in these declarations. There is a universal language pervading them all, having one meaning. They affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations of private persons. They are organic utterances. They speak the voice of the entire people. While, because of a general recognition of this truth, the question has seldom been presented to the courts, yet we find that in *Updegraph v. Commonwealth,* it was decided that

"Christianity, general Christianity, is, and always has been, a part of the common law of Pennsylvania; . . . not Christianity with an established church and tithes and spiritual courts, but Christianity with liberty of conscience to all men."

And in *People v. Ruggles,* Chancellor Kent, the great commentator on American law, speaking as Chief Justice of the Supreme Court of New York, said:

"The people of this state, in common with the people of this country, profess the general doctrines of Christianity as the rule of their faith and practice, and to scandalize the author of these doctrines is not only, in a religious point of view, extremely impious, but, even in respect to the obligations due to society, is a gross violation of decency and good order. . . . The free, equal, and undisturbed enjoyment of religious opinion, whatever it may be, and free and decent discussions on any religious subject, is granted and secured; but to revile, with malicious and blasphemous contempt, the religion professed by almost the whole community is an abuse of that right. Nor are we bound by any expressions in the Constitution, as some have strangely supposed, either not to punish at all, or to punish indiscriminately the like attacks upon the religion of Mahomet or of the Grand Lama, and for this plain reason, that the case assumes that we are a Christian people, and the morality of the country is deeply engrafted upon Christianity, and not upon the doctrines or worship of those impostors."

And in the famous case of *Vidal vs. Girard's Executors*, this Court, while sustaining the will of Mr. Girard, with its provision for the creation of a college into which no minister should be permitted to enter, observed: "It is also said, and truly, that the Christian religion is a part of the common law of Pennsylvania."

If we pass beyond these matters to a view of American life, as expressed by its laws, its business, its customs, and its society, we find every where a clear recognition of the same truth. Among other matters, note the following: the form of oath universally prevailing, concluding with an appeal to the Almighty; the custom of opening sessions of all deliberative bodies and most conventions with prayer; the prefatory words of all wills, "In the name of God, amen;" the laws respecting the observance of the Sabbath, with the general cessation of all secular business, and the closing of courts, legislatures, and other similar public assemblies on that day; the churches and church organizations which abound in every city, town, and hamlet; the multitude of charitable organizations existing every where under Christian auspices; the gigantic missionary associations, with general support, and aiming to establish Christian missions in every quarter of the globe. These, and many other matters which might be noticed, add a volume of unofficial declarations to the mass of organic utterances that this is a Christian nation. In the face of all these, shall it be believed that a Congress of the United States intended to make it a misdemeanor for a church of this country to contract for the services of a Christian minister residing in another nation?

Missouri vs. Holland (1920)

Decided 7-2. Determined that Federal treaties always trump Tenth Amendment States' rights.
A Missouri law regarding the hunting of migratory birds was overturned by the U. S. Supreme Court.

The case is particularly significant because of what Justice Oliver Wendell Holmes, Jr. (1902-1932, appointed by T. Roosevelt) wrote regarding the concept of a "living constitution" in his lengthy concurrence.

"With regard to that we may add that when we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it has taken a century and has cost their successors much sweat and blood to preserve that they created a nation. The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago. The treaty in question does not contravene any prohibitory words to be found in the Constitution. The only question is whether it is forbidden by some invisible radiation from the general terms of the Tenth Amendment. We must consider what this country has become in deciding what that amendment has reserved."

Cantwell vs. Connecticut (1940)

Decided 9-0. First-time application of the 1st Amendment (via the 14th)[1] to actions by a State.
A unanimous decision of the CT Supreme Court was overturned by the U.S. Supreme Court.

Justice Owen Roberts (1930-1945, appointed by Herbert Hoover) wrote, "to condition the solicitation of aid for the perpetuation of religious views or systems upon a license, the grant of which rests in the exercise of a determination by state authority as to what is a religious cause, is to lay a forbidden burden upon the exercise of liberty protected by the Constitution."

Everson vs. Board of Education (1947)

Decided 5-4. First-time misapplication[2] of Jefferson's "separation between Church and State" remark.
New Jersey law was overturned by the U.S. Supreme Court.

NJ had decided to provide state funding for transportation of students to any school, including private Christian schools. A taxpayer, Mr. Everson, complained that this was a violation of the First Amendment. Everson lost his case throughout the NJ court system, but then appealed to the U.S. Supreme Court. Justice Hugo Black (1927-1937, appointed by FDR) wrote for the majority.

"The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.'"

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[1] Based on the middle clause of Section One in the Fourteenth Amendment - "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;"
[2] In my opinion.

Abington vs. Schempp/Murray[3] vs. Curlett (1963)

Decided 8-1. This decision banned Bible reading in public schools.[4]

Justice William Brennan (1956-1990, appointed by Eisenhower) had much to say in his concurrence.

"A too literal quest for the advice of the Founding Fathers upon the issues of these cases seems to me futile and misdirected for several reasons: First, on our precise problem the historical record is at best ambiguous, and statements can readily be found to support either side of the proposition. The ambiguity of history is understandable if we recall the nature of the problems uppermost in the thinking of the statesmen who fashioned the religious guarantees; they were concerned with far more flagrant intrusions of government into the realm of religion than any that our century has witnessed. While it is clear to me that the Framers meant the Establishment Clause to prohibit more than the creation of an established federal church such as existed in England, I have no doubt that, in their preoccupation with the imminent question of established churches, they gave no distinct consideration to the particular question whether the clause also forbade devotional exercises in public institutions.

"Second, the structure of American education has greatly changed since the First Amendment was adopted. In the context of our modern emphasis upon public education available to all citizens, any views of the eighteenth century as to whether the exercises at bar are an "establishment" offer little aid to decision. Education, as the Framers knew it, was in the main confined to private schools more often than not under strictly sectarian supervision. Only gradually did control of education pass largely to public officials. It would, therefore, hardly be significant if the fact was that the nearly universal devotional exercises in the schools of the young Republic did not provoke criticism; even today religious ceremonies in church-supported private schools are constitutionally unobjectionable.

"Third, our religious composition makes us a vastly more diverse people than were our forefathers. They knew differences chiefly among Protestant sects. Today the Nation is far more heterogeneous religiously, including as it does substantial minorities not only of Catholics and Jews but as well of those who worship according to no version of the Bible and those who worship no God at all. See *Torcaso v. Watkins*. In the face of such profound changes, practices which may have been objectionable to no one in the time of Jefferson and Madison may today be highly offensive to many persons, the deeply devout and the nonbelievers alike.

"Whatever Jefferson or Madison would have thought of Bible reading or the recital of the Lord's Prayer in what few public schools existed in their day, our use of the history of their time must limit itself to broad purposes, not specific practices. By such a standard, I am persuaded, as is the Court, that the devotional exercises carried on in the Baltimore and Abington schools offend the First Amendment because they sufficiently threaten in our day those substantive evils the fear of which called forth the Establishment Clause of the First Amendment. It is "a constitution we are expounding," and our interpretation of the First Amendment must necessarily be responsive to the much more highly charged nature of religious questions in contemporary society.

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[3] The petitioner on this bundled case was the famous atheist, Madelyn Murray O'Hair.

[4] During the previous year (1962), in **Engel vs. Vitale**, on a 6-1 vote, the U.S. Supreme Court had struck down a New York law which had composed a non-sectarian prayer – "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country. Amen." - to be offered at the beginning of each school day. The summary of the decision reads: "Because of the prohibition of the First Amendment against the enactment of any law 'respecting an establishment of religion,' which is made applicable to the States by the Fourteenth Amendment, state officials may not compose an official state prayer and require that it be recited in the public schools of the State at the beginning of each school day -- even if the prayer is denominationally neutral and pupils who wish to do so may remain silent or be excused from the room while the prayer is being recited."

"Fourth, the American experiment in free public education available to all children has been guided in large measure by the dramatic evolution of the religious diversity among the population which our public schools serve. The interaction of these two important forces in our national life has placed in bold relief certain positive values in the consistent application to public institutions generally, and public schools particularly, of the constitutional decree against official involvements of religion which might produce the evils the Framers meant the Establishment Clause to forestall. The public schools are supported entirely, in most communities, by public funds - funds exacted not only from parents, nor alone from those who hold particular religious views, nor indeed from those who subscribe to any creed at all. It is implicit in the history and character of American public education that the public schools serve a uniquely public function: the training of American citizens in an atmosphere free of parochial, divisive, or separatist influences of any sort - an atmosphere in which children may assimilate a heritage common to all American groups and religions. See Illinois ex rel. *McCollum v. Board of Education*. This is a heritage neither theistic nor atheistic, but simply civic and patriotic. See *Meyer v. Nebraska*.

"Attendance at the public schools has never been compulsory; parents remain morally and constitutionally free to choose the academic environment in which they wish their children to be educated. The relationship of the Establishment Clause of the First Amendment to the public school system is preeminently that of reserving such a choice to the individual parent, rather than vesting it in the majority of voters of each State or school district. The choice which is thus preserved is between a public secular education with its uniquely democratic values, and some form of private or sectarian education, which offers values of its own. In my judgment the First Amendment forbids the State to inhibit that freedom of choice by diminishing the attractiveness of either alternative - either by restricting the liberty of the private schools to inculcate whatever values they wish, or by jeopardizing the freedom of the public schools from private or sectarian pressures. The choice between these very different forms of education is one - very much like the choice of whether or not to worship - which our Constitution leaves to the individual parent. It is no proper function of the state or local government to influence or restrict that election. The lesson of history - drawn more from the experiences of other countries than from our own - is that a system of free public education forfeits its unique contribution to the growth of democratic citizenship when that choice ceases to be freely available to each parent."

Justice Potter Stewart (1958-1981, also appointed by Eisenhower) was the lone dissenter.

"It is, I think, a fallacious oversimplification to regard the [religion clauses] as establishing a single constitutional standard of "separation of church and state", which can be applied in every case to delineate the required boundaries between government and religion.... As a matter of history, the First Amendment was adopted solely as a limitation upon the newly created National Government. The events leading to its adoption strongly suggest that the Establishment Clause was primarily an attempt to insure that Congress not only would be powerless to establish a national church, but would also be unable to interfere with existing state establishments. ... So matters stood until the adoption of the Fourteenth Amendment, or more accurately, until this Court's decision in *Cantwell*...."

"If religious exercises are held to be an impermissible activity in schools, religion is placed in an artificial and state-created disadvantage.... And a refusal to permit religious exercises thus is seen, not as the realization of state neutrality, but rather as the establishment of a religion of secularism, or at least, as governmental support of the beliefs of those who think that religious exercises should be conducted only in private"

The Current Legal Standard = "The Lemon Test"[5]

1. Any law or statute must have a secular purpose.
2. The purpose of the law or statute can't promote or inhibit any religion of any sort.
3. The law or statute can't foster "excessive government entanglement" with any religion.

[5] As formulated in ***Lemon v. Kurtzman* (1971).** Decided 8-1.

California's Family Law Act of 1969 (Effective January 1, 1970)

Signed into law by Governor Ronald Reagan (divorced by Jane Wyman in 1949).

This law began the no-fault divorce avalanche within the U.S. By 1977, nine states allowed no-fault divorces. By 1983, all but SD & NY were no-fault divorce states. Today all states, districts & territories of the U. S. permit no-fault divorce.

According to U. S. Census Bureau statistics, in the year 1900 less than 1/10 of 1 % of men & women had been divorced. By 1950 the figure had grown to around 1 %. In 1980, after the introduction of the no-fault divorce concept, 4.5 % of men had been divorced & nearly 7% of the women. In 2000 the reported figures were 9 % of the men & 12 % of the women.

According to recent studies done by the Enrichment Journal:

- The divorce rate in America for first marriage is 41%
- The divorce rate in America for second marriage is 60%
- The divorce rate in America for third marriage is 73%

Cohabitation in the United States

From the online *Encyclopedia of Everyday Law*: "In 1970, about 530,000 couples reportedly lived together outside marriage. This number increased to 1.6 million in 1980, 2.9 million in 1990, 4.2 million in 1998, and 5.5 million in 2000.

"Laws prohibiting cohabitation and sexual relations outside marriage were very common until about the1970s. Though most of these laws have been repealed or are no longer enforced, they still exist in some state statutes. Eight states still have laws prohibiting cohabitation, which is usually defined as two individuals living together as husband and wife without being legally married. Nine states prohibit fornication, which is usually defined as consensual sexual intercourse outside marriage."

The National Institute of Child Health & Human Development reported that "Cohabitation, once rare, is now the norm: The researchers found that more than half (54 percent) of all first marriages between 1990 and 1994 began with unmarried cohabitation. They estimate that a majority of young men and women of marriageable age today will spend some time in a cohabiting relationship. ... Cohabiting relationships are less stable than marriages and that instabililty is increasing, the study found."

Readily Available Cohabitation Facts:

- Living together is considered to be more stressful than being married.
- Just over 50% of first cohabiting couples ever get married.
- U.S. & U.K. couples who live together are at a greater risk for divorce than non-cohabiting couples.
- Couples who lived together before marriage tend to divorce early in their marriage. If their marriage lasts seven years, then their risk for divorce is the same as couples who didn't cohabit before marriage.

Roe vs. Wade (1973)

Decided 7-2. This decision resulted in the legalized abortion.
The U.S. Supreme Court overturned abortion restriction laws in all 50 states.

The majority of the court deemed abortion a "fundamental right" protected by the Constitution. Justice Harry Blackmun (1970-1994, appointed by Nixon), writing for the majority, asserted that a "right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."

The dissenting justices saw it as "an improvident and extravagant exercise of the power of judicial review that the Constitution extends to this Court."