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The Supreme Court and *The Federalist*: A Citation List and Analysis, 1789-1996*

BY BUCKNER F. MELTON, JR.**

I. INTRODUCTION

“If judges make law,” the eminent constitutional scholar Edward S. Corwin reputedly once remarked, “then so do commentators.” Corwin, himself a leading commentator on the United States Constitution,¹ may well have drawn this conclusion from personal

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¹ See, e.g., EDWARD S. CORWIN, *THE CONSTITUTION AND WHAT IT MEANS TODAY* (Harold W. Chase & Craig R. Ducat eds., 14th ed. 1978); see also *THE*

experience, for citations to his work appear in a number of cases.² One need not have a similar track record, however, in order to agree that the aphorism contains more than a grain of truth. Those knowledgeable in the history of American law, the federal Constitution, or the general history of the American revolutionary and early national periods know well the influence that certain seminal legal treatises had upon our government institutions and legal doctrine. Blackstone's *Commentaries*,³ of course, springs to mind at once. In a day in which West's Federal Reporter System alone runs to thousands of books,⁴ those new to the study of early American law may react with surprise to the momentous impact that Blackstone's four volumes had upon the era. The relative brevity of the work (compared to the mass of contemporary English statutes and reported cases, or America's own late-twentieth century legal materials), however, bears little relationship to its importance.⁵ What matters is that Blackstone shaped the thinking of individuals who played a key role in the revolution, who designed the early state constitutions as well as the federal Constitution, who molded the state and national governments during their early years, and who studied, practiced, and made (or, in the language of the Enlightenment, "discovered") law for generations.⁶

OXFORD COMPANION TO THE SUPREME COURT OF THE UNITED STATES 200 (Kermit L. Hall et al. eds., 1992).

² See, e.g., *New State Ice Co. v. Liebmann*, 285 U.S. 262, 307 n.50 (1932) (Brandeis, J., dissenting) (citing Edward S. Corwin, *Social Planning Under the Constitution*, 26 AM. POL. SCI. REV. 1 (1932)); *Ameron, Inc. v. United States Army Corps of Engineers*, 809 F.2d 979, 990 (3d Cir. 1986) (citing EDWARD S. CORWIN, *THE PRESIDENT: OFFICE AND POWERS, 1787-1984* (5th rev. ed. 1984)).

³ WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* (Oxford, Clarendon Press 1765-69).

⁴ At the time of this writing, the Supreme Court Reporter, the three series of Federal Reporter, and the Federal Supplement together consist of about 2500 volumes.

⁵ If brevity was relevant at all, it may actually have increased Blackstone's influence in eighteenth century America, where transportation facilities were limited, law libraries few and small, and English and colonial reporters either unavailable or altogether nonexistent. The value of a portable treatise in such circumstances is obvious. See LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 33 (2d ed. 1985).

⁶ See DANIEL J. BOORSTIN, *THE MYSTERIOUS SCIENCE OF THE LAW* 26-27 (1941); Dennis R. Nolan, *Sir William Blackstone and the New American Republic: A Study on Intellectual Impact*, 51 N.Y.U. L. REV. 731, 768 (1976) ("Blackstone's influence in the common law and in our system of legal education is so firmly fixed that if [Thomas] Jefferson were alive today, he would not

Indeed, Blackstone continued to be the staple of law study in some states even into the early years of our own century.⁷

In time, other commentaries appeared: James Kent's works,⁸ for example, are familiar to scholars, as are Joseph Story's various endeavors,⁹ and one may also run across similarly important though somewhat lesser-known writings as well.¹⁰ Both singly and together, these books provide support for Corwin's maxim. Among these better- and lesser-known works, however, the name of one — not quite a treatise in the traditional sense but a commentary of great magnitude nevertheless — stands out even to modern legal practitioners who may have little or no acquaintance with the writings of Blackstone. In 1787 and 1788, using the name of Publius,¹¹ Alexander Hamilton and James Madison, together

know where to begin should he still wish to eradicate it.”).

⁷ See, e.g., SAMUEL F. MORDECAI, *LAW LECTURES* (1916) (comprising a tutorial on North Carolina real property law that draws from the pages of Blackstone's Commentaries).

⁸ See, e.g., JAMES KENT, *COMMENTARIES ON AMERICAN LAW* (1826). Even Kent's work attests to Blackstone's pervasiveness, emulating the latter in its general organization, including the four volume format.

⁹ See, e.g., JOSEPH STORY, *COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES* (Boston, Hilliard, Gray and Company 1833); JOSEPH STORY, *COMMENTARIES ON THE LAW OF AGENCY AS A BRANCH OF COMMERCIAL AND MARITIME JURISPRUDENCE, WITH OCCASIONAL ILLUSTRATIONS FROM THE CIVIL AND FOREIGN LAW* (Boston, C.C. Little & J. Brown, 3d ed. 1846); JOSEPH STORY, *COMMENTARIES ON THE LAW OF BAILMENTS, WITH ILLUSTRATIONS FROM THE CIVIL AND THE FOREIGN LAW* (Cambridge, Hilliard and Brown, 1832); JOSEPH STORY, *COMMENTARIES ON EQUITY JURISPRUDENCE AS ADMINISTERED IN ENGLAND AND AMERICA* (Boston, Hilliard, Gray and Company 1836).

¹⁰ See, e.g., James Wilson, *Lectures on Law* pts. 1-2 (1804), reprinted in 1 *THE WORKS OF JAMES WILSON* 69-440 (Robert Green McCloskey ed., 1967); *id.* pts. 2-3, reprinted in 2 *THE WORKS OF JAMES WILSON*, *supra*, at 441-707.

¹¹ Publius, the name that the three writers of *The Federalist* collectively adopted, referred to “the ancient Roman who, following Lucius Brutus's overthrow of the last king of Rome, . . . established the republican foundation of the Roman government.” FORREST McDONALD & ELLEN SHAPIRO McDONALD, *REQUIEM: VARIATIONS ON EIGHTEENTH-CENTURY THEMES* 5 (1988). The McDonalds point out that the essays' readers would generally have understood the allusion. *Id.*; see *infra* notes 15-18 and accompanying text. While other political writers in this era also used classical names, “‘Publius’ was a cut above ‘Caesar’ or ‘Brutus’ or even ‘Cato.’ Publius Valerius was not a late defender of the republic but one of its founders. His more famous name, Publicola, meant

with the highly-esteemed attorney and diplomat John Jay, penned a series of essays that appeared first in the newspapers of New York and then, almost simultaneously, in book form.¹² These essays, which we have come to know as *The Federalist Papers* or simply *The Federalist*, soon became one of the most authoritative commentaries on the new federal Constitution, the ratification of which Hamilton, Madison, and Jay advocated in these writings.¹³

The Federalist was far from being the only such commentary on the proposed Constitution, either supporting or opposing the document's adoption. Rarely in American history, in fact, has such an intellectual and political debate played out in pamphlets, tracts, convention speeches, private correspondence, and of course the nation's newspapers.¹⁴ In an age that predated most scholarly journals and modern mass media, small newspapers were a key forum for intellectual exchanges, in-depth political discussion, and hotly partisan diatribes.¹⁵ Forrest and Ellen Shapiro

'friend of the people.'" ALBERT FURTWANGLER, *THE AUTHORITY OF PUBLIUS: A READING OF THE FEDERALIST PAPERS* 51 (1984). For a listing of classical sources on Publius, see 1 T. ROBERT S. BROUGHTON, *THE MAGISTRATES OF THE ROMAN REPUBLIC* 2 (1951); for a more in-depth look at this individual, see PLUTARCH, *THE LIVES OF THE NOBLE GRECIANS AND ROMANS* 117-30 (John Dryden trans., revised by Arthur Hugh Clough, Modern Library ed. 1979). See also Letter from James Madison to James K. Paulding, July 23, 1818, in 8 *THE WRITINGS OF JAMES MADISON* 410 n.1 (Galliard Hunt ed., 1908) (recounting Madison's explanation for the authors' choice of the name Publius).

¹² ALEXANDER HAMILTON ET AL., *THE FEDERALIST* xiv-xv (Jacob E. Cooke ed., 1961) [hereinafter Cooke].

¹³ *Id.* at xi. For a highly readable account of the writing of *The Federalist* and the personalities behind it, see RICHARD B. MORRIS, *WITNESSES AT THE CREATION: HAMILTON, MADISON, JAY, AND THE CONSTITUTION* (1985).

¹⁴ The most complete compilation of these materials appears in *DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION* (John P. Kaminski & Gaspare J. Saladino eds., 1976) [hereinafter *DOCUMENTARY HISTORY*], which currently stands at 15 volumes. A shorter, more recent collection is *THE DEBATE ON THE CONSTITUTION: FEDERALIST AND ANTIFEDERALIST SPEECHES, ARTICLES, AND LETTERS DURING THE STRUGGLE OVER RATIFICATION* (1992).

¹⁵ See STANLEY ELKINS & ERIC MCKITRICK, *THE AGE OF FEDERALISM* 518 (1993) (describing the partisan leanings in the election of 1796 of some of the better-known newspaper editors such as the Republican Benjamin Franklin Bache and the Federalists William Cobbett and John Fenno); JOHN C. MILLER, *THE FEDERALIST ERA 1789-1801*, at 89-92 (1960) (describing debates that involved, among others, Alexander Hamilton and Thomas Jefferson). For a short history of the ratification debate of 1787-88 and the role of newspapers and other printed

McDonald captured the essence of the newspaper and its role in the early United States when they wrote “Americans were literate. . . . [A] greater percentage of citizens could read and write than was true of any other nation on earth (and, [we] have no doubt, a greater percentage than can do so today).”¹⁶ These authors pointed out that “[n]early four times as many newspapers were published in the United States as were published in France, though France had six times as many people and was possibly the most literate nation on the European Continent” and that American readers “were sophisticated as well as cosmopolitan.”¹⁷ That the level of intellectual exchange in the nation’s newspapers was high is clear.

In 1786 Isaiah Thomas, printer of a weekly newspaper in Worcester, Massachusetts, called the *Massachusetts Spy*, was seeking ways to amuse his readers in the absence of pressing news. There had been some controversy over Alexander Pope’s translation of the Iliad — Samuel Johnson is said to have quipped, “It is beautiful, sir, but is it Homer?” — and Thomas gave his readers the opportunity to decide for themselves by printing Pope’s translation and the original Greek in parallel columns.¹⁸

Such a medium as this spawned many high-quality writings besides *The Federalist*, and some of these, like *The Federalist*, have appeared in book form.¹⁹ None, though, has ever achieved the fame of *The Federalist*. Statesmen, Supreme Court justices, and scholars of the first order have paid great tribute to the work.²⁰ Soon after the essays’ publication,

works therein, see RICHARD B. MORRIS, *THE FORGING OF THE UNION 1781-1789*, at 300-17 (1987).

¹⁶ MCDONALD & MCDONALD, *supra* note 11, at 3-4.

¹⁷ *Id.* at 4.

¹⁸ *Id.* at 5. What the McDonalds probably had in mind was a remark not of Johnson but of Richard Bentley, which Johnson recorded in his life of Pope. “[I]t is a pretty poem, Mr. Pope,” said Bentley, “but you must not call it Homer.” 4 *THE WORKS OF SAMUEL JOHNSON* 126 n.* (John Hawkins ed., 1787).

¹⁹ See, e.g., *THE COMPLETE ANTI-FEDERALIST* (Herbert J. Storing ed., 1981) (comprising the most extensive collection of materials); *THE ANTI-FEDERALIST* (Herbert J. Storing ed., 1985) (a one-volume abridgment of the previous work); *THE ANTI-FEDERALIST PAPERS AND THE CONSTITUTIONAL CONVENTION DEBATES* (Ralph Ketcham ed., 1986); *THE ANTIFEDERALISTS* (Cecelia M. Kenyon ed., 1966); *THE ESSENTIAL ANTIFEDERALIST* (W.B. Allen et al. eds., 1985); *SOURCES*, *supra* note 14.

²⁰ *The Federalist* also continues to be a source of considerable scholarly

Thomas Jefferson wrote that they were "the best commentary on the principles of government which was ever written"²¹ and that as practical political treatises went "there is no better book than *The Federalist*."²²

attention. More recent studies include GEORGE W. CAREY, *THE FEDERALIST: DESIGN FOR A CONSTITUTIONAL REPUBLIC* (1989) (analyzing *The Federalist's* treatment of major themes such as republicanism, separation of powers, federalism, and limited government); GOTTFRIED DIETZE, *THE FEDERALIST: A CLASSIC ON FEDERALISM AND FREE GOVERNMENT* (1960) (analyzing *The Federalist* both in historical context and as a treatise on government); DAVID C. EPSTEIN, *THE POLITICAL THEORY OF THE FEDERALIST* (1984) (discussing the Lockean and republican elements of the essays); *THE FEDERALIST PAPERS AND THE NEW INSTITUTIONALISM* (Bernard Grofman & Donald Wittman eds., 1989) (examining *The Federalist* with analytical tools such as microeconomics and game theory); GEORGE MACE, *LOCKE, HOBBS, AND THE FEDERALIST PAPERS: AN ESSAY ON THE GENESIS OF THE AMERICAN POLITICAL HERITAGE* (1979) (examining the relative impact of Locke and Hobbes on the founders' ideas and concluding that the latter writer's contribution is greater than it seems at first glance); VINCENT OSTROM, *THE POLITICAL THEORY OF A COMPOUND REPUBLIC: DESIGNING THE AMERICAN EXPERIMENT* (2d ed. 1987) (using the particular arguments that appear in *The Federalist* as a means to understanding the broader theory of constitutionalism in the late eighteenth century); MORTON WHITE, *PHILOSOPHY, THE FEDERALIST, AND THE CONSTITUTION* (1987) (attempting to discern and to present a single coherent political philosophy in the essays); GARRY WILLS, *EXPLAINING AMERICA: THE FEDERALIST* (1981) (examining Hume's impact on the essays); Marc M. Arkin, "The Intractable Principle: David Hume, James Madison, Religion, and the Tenth Federalist," 39 AM. J. LEGAL HIST. 148 (1995); Sotirios A. Barber, *Judicial Review and The Federalist*, 55 U. CHI. L. REV. 836 (1988); Price Marshall, "No Political Truth: The Federalist and Justice Scalia on the Separation of Powers," 12 U. ARK. LITTLE ROCK L.J. 245 (1989-90); Victoria Nourse, *Toward a "Due Foundation" for the Separation of Powers: The Federalist Papers as Political Narrative*, 74 TEX. L. REV. 447 (1996); Mark Tushnet, *Constitutional Interpretation and Judicial Selection: A View from The Federalist Papers*, 61 S. CAL. L. REV. 1669 (1988); James W. Ducayet, Note, *Publius and Federalism: On the Use and Abuse of The Federalist in Constitutional Interpretation*, 68 N.Y.U. L. REV. 821 (1993). For a modern bibliography, see the subject index in KERMIT L. HALL, *A COMPREHENSIVE BIBLIOGRAPHY OF AMERICAN CONSTITUTIONAL AND LEGAL HISTORY, 1896-1979* (1984) and its supplement under "Federalist." An older but still useful bibliography appears in ALEXANDER HAMILTON ET AL., *THE FEDERALIST PAPERS* 314-20, 322 (Roy P. Fairfield ed., 2d ed. 1966) [hereinafter Fairfield].

²¹ Letter from Thomas Jefferson to James Madison (Nov. 18, 1788), in 14 *THE PAPERS OF THOMAS JEFFERSON* 188 (Julian P. Boyd et al. eds., 1958).

²² Letter from Thomas Jefferson to Thomas Mann Randolph, Jr. (May 30,

No less a Chief Justice than John Marshall wrote, in no less a case than *M'Culloch v. Maryland*,²³ that "the opinions expressed by the authors of that work have been justly supposed to be entitled to great respect in expounding the constitution."²⁴ In our own century, Vernon L. Parrington has written of the work that "[f]rom the mass of contemporary pamphlets it emerges like a colossus."²⁵ More recently, Henry Steele Commager described *The Federalist* as "all in all the most significant political treatise of the century and the one with the longest influence."²⁶ In the introduction to one of the better-known recent editions of the essays, Clinton Rossiter stated grandly that "*The Federalist* is the most important work in political science that has ever been written, or is likely ever to be written, in the United States."²⁷

Despite all of these laudatory remarks, however, two obstacles prevent legal scholars or practitioners from going directly to *The Federalist's* pages in an attempt to "expound[] the constitution,"²⁸ or, more ambitiously, to discern the document's "true meaning" or "proper interpretation" (assuming arguendo that such things exist).²⁹ The first of these obstacles is inherent in the nature of the essays themselves. Written by not one, but three, individuals, published sporadically and with little long-range planning,³⁰ the organization of *The Federalist* falls far short

1790), in 16 THE PAPERS OF THOMAS JEFFERSON, *supra* note 21, at 449.

²³ *M'Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819).

²⁴ *Id.* at 433.

²⁵ 1 VERNON L. PARRINGTON, MAIN CURRENTS IN AMERICAN THOUGHT: THE COLONIAL MIND, 1620-1800, at 284 (1927).

²⁶ HENRY STEELE COMMAGER, THE EMPIRE OF REASON: HOW EUROPE IMAGINED AND AMERICA REALIZED THE ENLIGHTENMENT 112 (1977).

²⁷ ALEXANDER HAMILTON ET AL., THE FEDERALIST vii (Clinton Rossiter ed., 1961) [hereinafter Rossiter].

²⁸ *M'Culloch*, 17 U.S. (4 Wheat.) at 433.

²⁹ The debate over the wisdom of originalism is far too extensive to enter into here. The author has written elsewhere that whatever the doctrine's theoretical merits, occasions may still arise in which originalist arguments are necessary. See Buckner F. Melton, Jr., *Eminent Domain, "Public Use," and the Conundrum of Original Intent*, 36 NAT. RESOURCES J. 59, 65-66 (1996). For a recent summary of various schools of interpretation in a statutory context, see Carlos E. González, *Reinterpreting Statutory Interpretation*, 74 N.C. L. REV. 585, 594-633 (1996).

³⁰ For a history and chronology of the writing and initial publication of the essays, see Cooke, *supra* note 12, at xi-xv. *But cf.* MORRIS, *supra* note 13, at 13 (arguing that "[t]he systematic organization of *The Federalist*, and the extraordinarily rapid pace that its writers managed to maintain, suggest that its content

of Blackstone's or Kent's more systematic treatments of their subjects. Unlike more theoretical, roughly contemporary works, such as Adam Smith's *Wealth of Nations*³¹ or Montesquieu's *Spirit of the Laws*,³² *The Federalist* was a practical writing, a response to criticisms of the proposed Constitution³³ — “a brilliant collection of connected political pamphlets, written hastily in defense of a shrewdly drawn legal document.”³⁴ The circumstances of the essays' origin, moreover, probably contributed to certain flaws that some readers discerned. Critics have labeled the essays, for instance, as “dull and repetitious” on the one hand³⁵ and self-contradictory on the other.³⁶ John Quincy Adams once described numbers 9 and 10 of *The Federalist* as “rival dissertations upon faction and its remedy.”³⁷ Adams's observation also reveals a further problem: isolating a central doctrinal thesis in the essays' pages is difficult if not impossible, if for no other reason than such a thesis (apart from the proposition that the Constitution is worthy of ratification) is probably nonexistent.³⁸

and scope had been planned before the initial letter was written.”).

³¹ ADAM SMITH, *AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS* (Edwin Cannan ed., Modern Library 1937) (1776).

³² MONTESQUIEU, *THE SPIRIT OF THE LAWS* (Anne M. Cobler trans., Cambridge University Press 1989) (1748).

³³ See Cooke, *supra* note 12, at xi.

³⁴ WHITE, *supra* note 20, at 3-4. Epstein disagrees: “[T]he work was written with more care and precision than is often assumed. The authors . . . were aided by many years' experience of and reflection on their subjects, so that they did not begin from scratch when facing each deadline.” EPSTEIN, *supra* note 20, at 2; see also OSTROM, *supra* note 20, at 14-16 (arguing that postulating the authors' true motivations and then judging the essays' ideas based upon those motivations rather than the ideas' own merit constitutes an ad hominem argument); *supra* note 30.

³⁵ THE FEDERALIST CONCORDANCE xi (Thomas S. Engeman et al. eds., 1980).

³⁶ See *id.*

³⁷ JOHN QUINCY ADAMS, *THE LIVES OF JAMES MADISON AND JAMES MONROE* 41 (Buffalo, Geo. H. Derby and Co. 1850), cited in THE FEDERALIST CONCORDANCE, *supra* note 35, at xi.

³⁸ The fact that the work came from the quills of three separate authors makes this task still more difficult. See, e.g., DIETZE, *supra* note 20, chs. 4-6 (analyzing Hamilton's, Madison's, and Jay's contributions separately). But see CAREY, *supra* note 20, at xxiv-xxx (analyzing and discussing the philosophy of Publius as if he were a single individual); WHITE, *supra* note 20.

The second obstacle to using *The Federalist* itself as a guide to the true meaning and interpretation of the Constitution lies less in the essays themselves than in the partial inaccuracy of Corwin's maxim. Commentators may very well play a role in lawmaking, but they do so only when some authoritative official relies upon that commentary. This phenomenon is most evident when a judge quotes or cites a commentary in an opinion with approval, perhaps accompanying it with her own gloss. The commentator's grasp of a legal problem may be excellent; his statement of the doctrine may be marvelously clear; his analysis of constitutional or statutory wording may be incisive; his synthesis of the precedents brilliant and useful; his influence upon the members of the bar pervasive; but until the judge, or perhaps the legislator or administrative official, either expressly, or implicitly or indirectly, incorporates the commentator's work into an opinion, statute, or regulation, that commentary does not rise to the level of law.³⁹

Despite these obstacles, *The Federalist* has undoubtedly helped to shape the development of American constitutional interpretation, but it has done so not of its own force, but only through its incorporation into the primary legal authorities of the nation. The United States Supreme Court, for instance, has cited the essays on hundreds of occasions, ranging from brief, broad references to the essays as a whole⁴⁰ to comprehensive discussions of the meaning of particular passages.⁴¹ In doing so, the Court circumvents neatly both of the obstacles that *The*

³⁹ The word "law" can of course have many meanings. While the author recognizes that the debate is a perennial one, *see, e.g.*, RUGGERO J. ALDISERT, *THE JUDICIAL PROCESS* 18-47 (2d ed. 1996), the author does not wish to transform the current work into an addendum to the debate. Here the author has adopted the broadest definition that Blackstone gave for the word: "that rule of action, which is prescribed by some superior, and which the inferior is bound to obey." 1 WILLIAM BLACKSTONE, *COMMENTARIES* *38. This hierarchical definition which encompasses both the law of nature and the "rule of civil conduct" that is the particular subject of Blackstone's study, *id.* at 44, would seem to lie behind the rationale of shepardizing cases to determine whether they remain authoritative. The same would also seem to be true of other materials that courts and attorneys use, such as *The Federalist*. *See infra* note 45.

⁴⁰ *See, e.g.*, *Bowsher v. Synar*, 478 U.S. 714, 727 (1986) (citing *The Federalist* generally).

⁴¹ For a recent example of this phenomenon, see *U.S. Term Limits, Inc. v. Thornton*, 115 S. Ct. 1842, 1896-1901 (1995) (Thomas, J., dissenting) (citing *THE FEDERALIST* No. 52 extensively while discussing qualifications for holding office).

Federalist faces. This is especially true when (as is usually the case) the justices discuss only particular essays or parts thereof, since *The Federalist*, with its lack of internal cohesion, lends itself well to discussion of discrete sections instead of to reliance upon the work as a whole.⁴²

Simultaneously, however, the Court glosses the meaning of those sections that it discusses, giving them an official interpretation, much as it does any other source. Many equal protection opinions that the justices file, for instance, fail to quote fully, or to discuss expressly, the constitutional phrase "the equal protection of the laws."⁴³ The more likely and numerous references are to earlier equal protection cases, which in turn cite still other such cases, which ultimately quote or discuss the actual constitutional language. Through this process of accretion of precedents, the words that the Court has written about the Equal Protection Clause become at least as important as the words of the clause itself. A layperson reading the clause, and speculating on its meaning without any knowledge of equal protection doctrine as the courts have developed it, is apt to see meanings in the phrase "equal protection of the laws" that the courts have somehow never discovered.⁴⁴ Likewise, what the courts say about *The Federalist*, rather than *The Federalist* itself, would seem to be the authoritative statement of what the essays of Publius "really" mean.⁴⁵

⁴² *But see, e.g.,* McIntyre v. Ohio Elections Comm'n, 115 S. Ct. 1511, 1517 & n.6 (1995) (making reference to *The Federalist* in general). By their very nature, however, such broad citations tell us little about the justices' thoughts about *The Federalist*, other than that they consider it authoritative.

⁴³ U.S. CONST. amend. XIV, § 1. The usual practice is to refer to "the Equal Protection Clause," an "equal protection issue," and the like as a kind of shorthand for the whole range of concepts that exist more or less independently of the complete wording of the phrase. *See, e.g.,* Holland v. Illinois, 493 U.S. 474, 475 (1990). The phrase "the equal protection of the laws" appears nowhere in the opinion, though citations to earlier equal protection cases are abundant.

⁴⁴ To support this proposition the author can only cite his own experience in teaching his undergraduate courses in constitutional history, as well as observing that the phenomenon is common to many, if not most, major constitutional provisions.

⁴⁵ Certainly lower courts seem to think so. *See, e.g.,* FEC v. NRA Political Victory Fund, 6 F.3d 821, 827 (D.C. Cir. 1993) (citing the Supreme Court's earlier discussion of THE FEDERALIST No. 48, at 332 (James Madison) (Jacob E. Cooke ed. 1961)). The Supreme Court itself recently implied as much in the related context of historical interpretation. In the *Seminole Tribe v. Florida*, 116

Because of the Supreme Court's authoritative role in the American constitutional system and because of its frequent recourse to the pages of *The Federalist*, an understanding of that tribunal's "official" reading of the essays may be useful on occasion to scholars and advocates alike. While in theory a list of Supreme Court, or other, citations to *The Federalist* has been more-or-less readily available through Lexis or Westlaw searches for some time, researchers have done little in the way of using these services to organize the references to the essays. No Shepard's citator exists to reveal the Court's citation to various sections of the essays. The fact that many editions of *The Federalist* exist,⁴⁶ each of them having distinct pagination, some of them adopting different methods of numbering the essays from others,⁴⁷ and a few of them having slight spelling and wording variations,⁴⁸ makes matters even more difficult. On some occasions, in fact, a Supreme Court majority

S. Ct. 1114 (1996), regarding a question of the historical meaning of the Eleventh Amendment, the majority criticized the dissent for "disregard[ing] our case law in favor of a theory cobbled together from law review articles and its own version of historical events." *Id.* at 1129-30. The majority continued that the dissent's "undocumented and highly speculative extralegal explanation of the decision in [*Hans v. Louisiana*, 134 U.S. 1 (1890)] is a disservice to the Court's traditional method of adjudication." *Id.* at 1130. Presumably the approach that the majority championed in *Seminole Tribe* extends not just to history but to political theory as well.

⁴⁶ A list of many of the editions appears in Fairfield, *supra* note 20, at 307-14, 321. Among the better-known editions are ALEXANDER HAMILTON ET AL., *THE FEDERALIST* (Henry Cabot Lodge ed., 1911) [hereinafter Lodge]; other Lodge editions; and ALEXANDER HAMILTON ET AL., *THE FEDERALIST* (Henry B. Dawson ed., 1893) [hereinafter Dawson]. While Cooke's is the definitive edition, others still may have something to offer. Dawson's table of contents breaks down the entire volume, page by page, into discrete subjects, a useful approach since a single essay may deal with diverse topics; Rossiter's edition contains an annotated copy of the Constitution, the provisions of which refer to the pages of *The Federalist* that discuss those provisions. Other editions provide information more of interest to scholars than practitioners; the Lodge and Dawson editions, for instance, contain bibliographies (now dated, of course) of the early editions of the work.

⁴⁷ Compare, e.g., Cooke, *supra* note 12, at 347 (identifying one essay as *The Federalist* number 51) with Dawson, *supra* note 46, at 358 (identifying the same essay as number 50).

⁴⁸ Compare, e.g., Cooke, *supra* note 12, at 105-06 (adopting one set of spelling and punctuation conventions) with Dawson, *supra* note 46, at 107-08 (adopting different conventions).

opinion has cited one edition of *The Federalist*, while another opinion in the same case has cited another.⁴⁹

In the present work, the author has endeavored to alleviate these problems. The material that follows includes several research and analytical tools that the author hopes will permit others to trace the development of the Supreme Court justices'⁵⁰ collective thinking on *The Federalist*, as well as to analyze trends and patterns in those citations. The structure of these materials is straightforward. Its heart is an alphabetical list of every Supreme Court case in which a reference to *The Federalist*, or to Publius, appears.⁵¹ Based on their alphabetical order, the author has assigned each of these cases a case number. Accompanying the alphabetical list is a subject index.⁵² Following each subject index term appears a list of the case numbers for the cases in which the Court cited and/or quoted *The Federalist* in that context. A numerical listing of the eighty-five essays of *The Federalist* also appears,⁵³ with each essay number accompanying a similar list of case numbers of the cases that refer to that particular essay. This entire arrangement thus allows the reader to locate Supreme Court citations to *The Federalist* by case name, by subject, or by essay number.

In addition to these lists, the author has also included some basic statistical summaries of the Supreme Court citations. These include a

⁴⁹ Compare, e.g., *Freytag v. Commissioner*, 501 U.S. 868, 870 (1991) (citing the Cooke edition) with *id.* at 903 (Scalia, J., concurring) (citing the Rossiter edition).

⁵⁰ Citations to *The Federalist* obviously appear in the opinions of other federal, as well as state, courts. See, e.g., *FEC v. NRA Political Victory Fund*, 6 F.3d 821, 827 (D.C. Cir. 1993) (citing THE FEDERALIST No. 48, at 332 (James Madison) (Jacob E. Cooke ed. 1961)); *Pacific Merchant Shipping Ass'n v. Voss*, 907 P.2d 430, 436 (Cal. 1995) (citing THE FEDERALIST Nos. 41-42 (James Madison)), *cert. denied*, 116 S. Ct. 1851 (1996); *Salla v. County of Monroe*, 399 N.E.2d 909, 912 (N.Y. 1979) (citing THE FEDERALIST No. 80 (Alexander Hamilton)), *cert. denied*, 446 U.S. 909 (1980). Because of the relatively small number of United States Supreme Court cases (which tended to make the scope of this project manageable; inclusion of even the next tier of federal courts would have expanded this project's complexity by an order of magnitude), as well as the relative importance of those cases, the author has confined this project to the highest court.

⁵¹ See *infra* Part II (pp. 257-326).

⁵² See *infra* Part III (pp. 327-32).

⁵³ See *infra* Part IV (pp. 333-36). The author has adopted the Cooke edition's numbering system; see *infra* notes 61-63 and accompanying text.

chart displaying the relative frequency of citations by essay number;⁵⁴ timelines that plot frequency of all citations by year⁵⁵ and the number of cases that cite *The Federalist* by year;⁵⁶ a breakdown of citations by justice;⁵⁷ a breakdown of citations by the author of the essay cited;⁵⁸ and a breakdown of citations by type of opinion.⁵⁹

In all of these listings and charts, the author has converted every citation of *The Federalist* to a reference to the definitive Jacob E. Cooke edition.⁶⁰ While this means that a pinpoint citation in this list may not match the corresponding citation in the Court's opinion in terms of essay number or page number, the substantive material in *The Federalist* to which these lists and the Court refer will always be the same. While giving rise to a slight possibility of confusion in a few circumstances, this system also greatly facilitates ready cross-referencing to other citations to the same material by other cases and justices. The author chose the Cooke edition as the reference for several reasons: a) the edition is relatively recent and scholarly, definitive as to text, and still in print at the time of this writing;⁶¹ b) it is an edition of acknowledged quality;⁶² and c) a companion concordance to the Cooke edition is available,⁶³ which both increases its utility and largely made possible the current project.⁶⁴

⁵⁴ See *infra* chart 1 (p. 337). This Article and its contents adhere to Cooke's numbering of the essays. See Cooke, *supra* note 12, at xviii-xix.

⁵⁵ See *infra* chart 2 (p. 338).

⁵⁶ See *infra* chart 3 (p. 339).

⁵⁷ See *infra* chart 4 (pp. 340-43).

⁵⁸ See *infra* chart 5 (p. 344). This Article and its contents adhere to Cooke's attribution of the disputed essays. See Cooke, *supra* note 12, at xix-xxx. The following citation list indicates that a particular essay's authorship is, or was, in dispute, again using Cooke as a guide, by listing both authors, with the first-listed author presumably being the correct one.

⁵⁹ See *infra* chart 6 (p. 345).

⁶⁰ See *supra* note 12.

⁶¹ The modern paperback Cooke edition's ISBN number is 0-8195-6077-4.

⁶² See, e.g., WHITE, *supra* note 20, at 231 n.2.

⁶³ See THE FEDERALIST CONCORDANCE, *supra* note 35. The ISBN number of the hardback edition is 0-226-20836-2; the paperback edition number is 0-226-20837-0.

⁶⁴ For the scholar who wishes to perform keyword searches on the full text of *The Federalist*, an alternative to this excellent concordance exists. The Gutenberg Project, an ongoing effort to make a variety of classic works available in electronic format, has posted the text of *The Federalist* on the Internet, and downloading to personal computers is possible. At the time of this writing, two

To the degree that Corwin was correct when he wrote that commentators make law, the author hopes that the following materials will enable the long-dead writers of *The Federalist* to continue to help make law in the future.

different formats, with identical content, appear at <<ftp://uiarchive.cso.uiuc.edu/pub/etext/gutenberg/etext91/feder16.txt>> and <<ftp://uiarchive.cso.uiuc.edu/pub/etext/gutenberg/etext91/feder16.zip>> (visited Jan. 7, 1997).

II. ALPHABETICAL LISTING OF CITATIONS

- 1: *Adarand Constructors, Inc. v. Pena*, 115 S. Ct. 2097 (1995)
2124 (Stevens, J., dissenting) (No. 10, at 63-64 (James Madison))
(factions)
- 2: *Adickes v. S. H. Kress & Co.*, 398 U.S. 144 (1970)
178 n.1 (Douglas, J., dissenting in part) (No. 15, at 95 (Alexander Hamilton)) (law, nature of)
- 3: *American Dredging Co. v. Miller*, 114 S. Ct. 981 (1994)
995 (Kennedy, J., dissenting) (No. 22, at 135-37 (Alexander Hamilton)) (admiralty/maritime law; commerce power; pre-emption)
995 (Kennedy, J., dissenting) (No. 80, at 538 (Alexander Hamilton)) (admiralty/maritime law; commerce power; pre-emption)
- 4: *Anderson v. Celebrezze*, 460 U.S. 780 (1983)
813 (Rehnquist, J., dissenting) (No. 10 (James Madison))
(factions)
- 5: *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234 (1985)
239 n.2 (Powell, J., Opinion of the Court) (No. 39 (James Madison)) (federalism; judicial power; jurisdiction)
239 n.2 (Powell, J., Opinion of the Court) (No. 45 (James Madison)) (federalism; judicial power; jurisdiction)
239 n.2 (Powell, J., Opinion of the Court) (No. 46, at 316 (James Madison)) (federalism; judicial power; jurisdiction)
240 (Powell, J., Opinion of the Court) (No. 17, at 107 (Alexander Hamilton)) (federalism; judicial power; jurisdiction)

275-76 (Brennan, J., dissenting) (No. 81, at 548-49 (Alexander Hamilton)) (federalism; jurisdiction)

277 (Brennan, J., dissenting) (No. 32 (Alexander Hamilton)) (federalism; taxation)

277 n.25 (Brennan, J., dissenting) (No. 32, at 200 (Alexander Hamilton)) (federalism; taxation)

277 n.25 (Brennan, J., dissenting) (No. 80, at 535 (Alexander Hamilton)) (federalism; jurisdiction)

277-78 n.26 (Brennan, J., dissenting) (general citation) (federalism; jurisdiction)

278 (Brennan, J., dissenting) (No. 80, at 537 (Alexander Hamilton)) (judicial power)

278 n.27 (Brennan, J., dissenting) (No. 80, at 535 (Alexander Hamilton)) (judicial power; jurisdiction)

291 (Brennan, J., dissenting) (No. 80, at 538 (Alexander Hamilton)) (jurisdiction)

6: *Austin v. Michigan State Chamber of Commerce*, 494 U.S. 652 (1990)

710 (Kennedy, J., dissenting) (No. 10 (James Madison)) (factions)

7: *Baker v. Carr*, 369 U.S. 186 (1962)

303 & n.38 (Frankfurter, J., dissenting) (No. 56, at 382 (James Madison(or Alexander Hamilton))) (elections; representation)

307 n.62 (Frankfurter, J., dissenting) (No. 56, at 382 (James Madison (or Alexander Hamilton))) (representation)

308 n.74 (Frankfurter, J., dissenting) (No. 62, at 416-17 (James Madison (or Alexander Hamilton))) (representation)

308 n.75 (Frankfurter, J., dissenting) (No. 54, at 366-72 (James Madison (or Alexander Hamilton))) (representation)

8: Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964)

451 n.12 (White, J., dissenting) (No. 3, at 15-16 (John Jay))
(international law)

451 n.12 (White, J., dissenting) (No. 42 (James Madison))
(international law)

451 n.12 (White, J., dissenting) (No. 80, at 535-36, 538 (Alexander Hamilton)) (international law)

451 n.12 (White, J., dissenting) (No. 82 (Alexander Hamilton))
(international law)

451 n.12 (White, J., dissenting) (No. 83, at 568 (Alexander Hamilton)) (international law)

9: Blatchford v. Native Village, 501 U.S. 775 (1991)

780 n.1, 781 (Scalia, J., majority opinion) (No. 81, at 548-49
(Alexander Hamilton)) (sovereign immunity)

10: Bond v. Floyd, 385 U.S. 116 (1966)

136 n.13 (Warren, C.J., Opinion of the Court) (No. 60, at 409
(Alexander Hamilton)) (officeholding qualifications; voting
qualifications)

11: Bonito Boats, Inc. v. Thunder Craft Boats, Inc., 489 U.S. 141 (1989)

162 (O'Connor, J., majority opinion) (No. 43, at 288 (James Madison)) (copyright; patent)

12: Boos v. Barry, 485 U.S. 312 (1988)

323 (O'Connor, J., majority opinion) (No. 3, at 14-15 (John Jay))
(international law)

13: Bowsher v. Synar, 478 U.S. 714 (1986)

722 (Burger, C.J., majority opinion) (No. 47, at 325 (James Madison)) (separation of powers)

727 (Burger, C.J., majority opinion) (general citation) (separation of powers)

14: Branzburg v. Hayes, 408 U.S. 665 (1972)

730 n.6 (Stewart, J., dissenting) (general citation) (expression, freedom of)

15: Briscoe v. Bank of the Commonwealth, 36 U.S. (11 Pet.) 257 (1837)

332-33 (Story, J., dissenting) (No. 44, at 300 (James Madison)) (money/bills of credit/legal tender)

16: Brown v. Allen, 344 U.S. 443 (1953)

499 (Frankfurter, J.) (No. 82 (Alexander Hamilton)) (criminal law and procedure; jurisdiction)

17: Brown v. Hartlage, 456 U.S. 45 (1982)

56 n.7 (Brennan, J., majority opinion) (No. 10 (James Madison)) (factions; republicanism; voting)

56 n.7 (Brennan, J., majority opinion) (No. 51, at 349, 352-53 (James Madison (or Alexander Hamilton))) (factions; republicanism)

18: Brown v. Maryland, 25 U.S. (12 Wheat.) 419 (1827)

456 (Thompson, J., dissenting) (No. 32, at 199 (Alexander Hamilton)) (federalism; taxation)

19: Buckley v. Valeo, 424 U.S. 1 (1976)

120 & n.159 (per curiam) (No. 47, at 323 (James Madison)) (separation of powers)

120-21 & n.160 (per curiam) (No. 47, at 326-27 (James Madison)) (separation of powers)

121 (per curiam) (general citation) (separation of powers)

122-23 & n.161 (per curiam) (No. 51, at 349 (James Madison (or Alexander Hamilton))) (checks and balances)

129 (per curiam) (general citation) (legislative power; separation of powers)

129 & n.166 (per curiam) (No. 48, at 332-34 (James Madison)) (law, martial; separation of powers)

129 & n.166 (per curiam) (No. 71, at 483-84 (Alexander Hamilton)) (separation of powers)

285 & n.31 (White, J., concurring in part and dissenting in part) (No. 73, at 494 (Alexander Hamilton)) (legislative power; separation of powers)

20: Burnet v. Brooks, 288 U.S. 378 (1933)

401 (Hughes, C.J., Opinion of the Court) (No. 7 (Alexander Hamilton)) (taxation)

21: Bute v. Illinois, 333 U.S. 640 (1948)

650 n.5 (Burton, J., Opinion of the Court) (No. 44 (James Madison)) (criminal law and procedure; federalism)

650 n.5 (Burton, J., Opinion of the Court) (No. 45 (James Madison)) (criminal law and procedure; federalism)

650 n.5 (Burton, J., Opinion of the Court) (No. 46 (James Madison)) (criminal law and procedure; federalism)

22: C & A Carbone, Inc. v. Town of Clarkstown, 114 S. Ct. 1677 (1994)

1682 (Kennedy, J., majority opinion) (No. 22, at 135-37 (Alexander Hamilton)) (commerce power)

- 23:** *Calder v. Bull*, 3 U.S. (3 Dall.) 386 (1798)
391 (Chase, J., seriatim) (general citation) (ex post facto laws)
- 24:** *California Dep't of Corrections v. Morales*, 115 S. Ct. 1597 (1995)
1606 (Stevens, J., dissenting) (No. 44, at 301 (James Madison))
(ex post facto laws)
1606 (Stevens, J., dissenting) (No. 84, at 577 (Alexander Hamilton)) (ex post facto laws)
- 25:** *California v. Arizona*, 440 U.S. 59 (1979)
66 (Stewart, J., majority opinion) (No. 81, at 548-49 (Alexander Hamilton)) (jurisdiction, Supreme Court)
- 26:** *Capital Traction Co. v. Hof*, 174 U.S. 1 (1899)
6-7 (Gray, J., Opinion of the Court) (No. 81, at 550, 552 (Alexander Hamilton)) (juries)
6-7 (Gray, J., Opinion of the Court) (No. 83, at 566 (Alexander Hamilton)) (juries)
- 27:** *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962)
508 n.5 (Stewart, J., Opinion of the Court) (No. 82 (Alexander Hamilton)) (federalism; jurisdiction)
- 28:** *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831)
41 (Baldwin, J., concurring) (general citation) (indian rights; sovereignty)
63-64 (Thompson, J., dissenting) (No. 42, at 284-85 (James Madison)) (commerce power; indian rights)

29: *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley*, 454 U.S. 290 (1981)

294 (Burger, C.J., majority opinion) (general citation) (republicanism)

30: *City of Columbia v. Omni Outdoor Adver., Inc.*, 499 U.S. 365 (1991)

389 (Stevens, J., dissenting) (No. 10 (James Madison)) (factions)

31: *City of Eastlake v. Forest City Enter., Inc.*, 426 U.S. 668 (1976)

672 (Burger, C.J., majority opinion) (No. 39 (James Madison)) (legislative power; republicanism)

32: *City of El Paso v. Simmons*, 379 U.S. 497 (1965)

522 (Black, J., dissenting) (No. 44, at 301 (James Madison)) (contracts, obligation of)

533 (Black, J., dissenting) (No. 44, at 301 (James Madison)) (contracts, obligation of)

33: *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989)

523 (Scalia, J., concurring in the judgment) (No. 10, at 63-64 (James Madison)) (factions)

34: *Clafin v. Houseman*, 93 U.S. (3 Otto) 130 (1876)

138 (Bradley, J., Opinion of the Court) (No. 82, at 553-55 (Alexander Hamilton)) (federalism; judicial power)

35: *Clarke, Ex parte*, 100 U.S. (10 Otto) 399 (1879)

412 (Field, J., dissenting) (No. 42, at 285-87 (James Madison)) (federalism; naturalization)

417 (Field, J., dissenting) (No. 59, at 398 (Alexander Hamilton)) (elections)

418-19 (Field, J., dissenting) (No. 59, at 399-400 (Alexander Hamilton)) (elections)

36: *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264 (1821)

418-20 (Marshall, C.J., Opinion of the Court) (No. 82, at 555-56 (Alexander Hamilton)) (federalism; jurisdiction)

37: *Coleman v. Balkcom*, 451 U.S. 949 (1981)

962 (Rehnquist, J., dissenting from denial of certiorari) (No. 51, at 349 (James Madison (or Alexander Hamilton))) (criminal law and procedure)

38: *Coleman v. Thompson*, 501 U.S. 722 (1991)

759 (Blackmun, J., dissenting) (No. 51, at 352 (James Madison (or Alexander Hamilton))) (federalism; judicial power)

760 (Blackmun, J., dissenting) (No. 44, at 306 (James Madison)) (federalism)

39: *Collins v. Youngblood*, 497 U.S. 37 (1990)

43 (Rehnquist, C.J., majority opinion) (No. 44, at 301 (James Madison)) (Ex post facto Clause)

40: *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833 (1986)

860 (Brennan, J., dissenting) (No. 47, at 324 (James Madison)) (separation of powers)

860-61 (Brennan, J., dissenting) (No. 78, at 529 (Alexander Hamilton)) (judicial power; separation of powers)

861 (Brennan, J., dissenting) (No. 79, at 531 (Alexander Hamilton)) (separation of powers)

41: Communist Party v. Subversive Activities Control Bd., 367 U.S. 1 (1961)

95 (Frankfurter, J., Opinion of the Court) (No. 2 (John Jay))
(foreign affairs; expression, freedom of)

95 (Frankfurter, J., Opinion of the Court) (No. 3 (John Jay))
(foreign affairs; expression, freedom of)

95 (Frankfurter, J., Opinion of the Court) (No. 4 (John Jay))
(foreign affairs; expression, freedom of)

95 (Frankfurter, J., Opinion of the Court) (No. 5 (John Jay))
(foreign affairs; expression, freedom of)

95 (Frankfurter, J., Opinion of the Court) (No. 41, at 269 (James Madison)) (foreign affairs; expression, freedom of)

42: Cooley v. Board of Wardens, 53 U.S. (12 How.) 299 (1851)

318 (Curtis, J., Opinion of the Court) (No. 32 (Alexander Hamilton)) (federalism)

43: Covington & Cincinnati Bridge Co. v. Kentucky, 154 U.S. 204 (1894)

211-12 (Brown, J., Opinion of the Court) (No. 32 (Alexander Hamilton)) (federalism; taxation)

44: Cramer v. United States, 325 U.S. 1 (1945)

76 (Douglas, J., dissenting) (No. 43, at 290 (James Madison))
(treason)

45: Dames & Moore v. Regan, 453 U.S. 654 (1981)

659 (Rehnquist, J., majority opinion) (general citation) (executive power)

46: Dennis v. Higgins, 498 U.S. 439 (1991)

453 (Kennedy, J., dissenting) (No. 7, at 38-41 (Alexander Hamilton)) (commerce power)

453 (Kennedy, J., dissenting) (No. 11, at 71-72 (Alexander Hamilton)) (commerce power)

453 (Kennedy, J., dissenting) (No. 22, at 135-37 (Alexander Hamilton)) (commerce power)

453 (Kennedy, J., dissenting) (No. 42, at 283-85 (James Madison)) (commerce power)

453 (Kennedy, J., dissenting) (No. 53, at 362-63 (James Madison)) (commerce power)

47: Dennis v. United States, 341 U.S. 494 (1951)

519 (Frankfurter, J., concurring) (No. 41, at 269 (James Madison)) (expression, freedom of; national security)

48: Dennis v. United States, 339 U.S. 162 (1950)

182 (Frankfurter, J., dissenting) (No. 78, at 527-28 (Alexander Hamilton)) (independent judiciary; judicial tenure)

49: Department of Revenue v. Association of Wash. Stevedoring Cos., 435 U.S. 734 (1978)

754 n.19 (Blackmun, J., majority opinion) (No. 7 (Alexander Hamilton)) (commerce power)

754 n.19 (Blackmun, J., majority opinion) (No. 11 (Alexander Hamilton)) (commerce power)

754 n.19 (Blackmun, J., majority opinion) (No. 22 (Alexander Hamilton)) (commerce power)

754 n.19 (Blackmun, J., majority opinion) (No. 42 (James Madison)) (commerce power)

50: District of Columbia v. John R. Thompson Co., 346 U.S. 100 (1953)

109 (Douglas, J., Opinion of the Court) (No. 43 (James Madison)) (District of Columbia)

51: Dodge v. Woolsey, 59 U.S. (18 How.) 331 (1855)

356-57 (Wayne, J., Opinion of the Court) (No. 43, at 295 (James Madison)) (debt, public)

357-58 (Wayne, J., Opinion of the Court) (No. 22, at 143-44 (Alexander Hamilton)) (judicial power)

52: Dooley v. United States, 183 U.S. 151 (1901)

169-70 (Fuller, C.J., dissenting) (No. 32, at 200-01 (Alexander Hamilton)) (commerce power; taxation)

53: Draper v. United States, 358 U.S. 307 (1959)

317 (Douglas, J., dissenting) (No. 84, at 577 (Alexander Hamilton)) (criminal law and procedure)

54: Duncan v. Kahanamoku, 327 U.S. 304 (1946)

325 (Murphy, J., concurring) (No. 83 (Alexander Hamilton)) (law, martial; military)

55: Duncan v. Louisiana, 391 U.S. 145 (1968)

173 n.3 (Harlan II, J., dissenting) (No. 51 (James Madison (or Alexander Hamilton))) (Bill of Rights, federal; federalism)

173 n.4 (Harlan II, J., dissenting) (No. 84 (Alexander Hamilton)) (Bill of Rights, federal)

56: Edelman v. Jordan, 415 U.S. 651 (1974)

661 n.9 (Rehnquist, J., majority opinion) (No. 81, at 548-49 (Alexander Hamilton)) (sovereign immunity)

57: Edwards v. Kearzey, 96 U.S. (6 Otto) 595 (1877)

606 (Swayne, J., Opinion of the Court) (No. 7, at 42-43 (Alexander Hamilton)) (contracts, obligation of)

606 (Swayne, J., Opinion of the Court) (No. 44, at 301 (James Madison)) (contracts, obligation of)

607 (Swayne, J., Opinion of the Court) (general citation) (contracts, obligation of)

58: EEOC v. Wyoming, 460 U.S. 226 (1983)

268 n.3 (Powell, J., dissenting) (No. 41, at 269-76 (James Madison)) (military)

268 n.4 (Powell, J., dissenting) (No. 30 (Alexander Hamilton)) (taxation)

270 n.6 (Powell, J., dissenting) (No. 84, at 578-79 (Alexander Hamilton)) (federalism)

270-71 (Powell, J., dissenting) (No. 45, at 313 (James Madison)) (federalism)

59: Employees of Dep't of Pub. Health & Welfare v. Department of Pub. Health & Welfare, 411 U.S. 279 (1973)

292 n.7 (Marshall, J., concurring) (No. 81 (Alexander Hamilton)) (sovereign immunity)

317 (Brennan, J., dissenting) (No. 81, at 548-49 (Alexander Hamilton)) (sovereign immunity)

60: Employers' Liability Cases, 207 U.S. 463 (1908)

519 (Moody, J., dissenting) (No. 42, at 283-85 (James Madison)) (commerce power)

61: Evans v. Gore, 253 U.S. 245 (1920)

249-50 (Van Devanter, J., Opinion of the Court) (No. 78, at 522-23, 524 (Alexander Hamilton)) (independent judiciary)

252-53 (Van Devanter, J., Opinion of the Court) (No. 79, at 531-32 (Alexander Hamilton)) (compensation of judges; independent judiciary; judicial tenure)

261 (Van Devanter, J., Opinion of the Court) (general citation) (taxation)

265 (Holmes, J., dissenting) (No. 79, at 531 (Alexander Hamilton)) (compensation of judges; independent judiciary)

62: Exxon Corp. v. Governor of Md., 437 U.S. 117 (1978)

142 (Blackmun, J., concurring in part and dissenting in part) (No. 7 (Alexander Hamilton)) (commerce power)

142 (Blackmun, J., concurring in part and dissenting in part) (No. 11 (Alexander Hamilton)) (commerce power)

142 (Blackmun, J., concurring in part and dissenting in part) (No. 12 (Alexander Hamilton)) (commerce power)

142 (Blackmun, J., concurring in part and dissenting in part) (No. 42 (James Madison)) (commerce power)

63: Fairbank v. United States, 181 U.S. 283 (1901)

309 (Brewer, J., Opinion of the Court) (general citation) (statutory interpretation; taxation)

64: Farmers Educ. and Coop. Union v. WDAY, Inc., 360 U.S. 525 (1959)

545-46 (Frankfurter, J., dissenting) (No. 32, at 200-03 (Alexander Hamilton)) (federalism)

65: *Farmers Loan & Trust Co. v. Minnesota*, 280 U.S. 204 (1930)

209 (McReynolds, J., Opinion of the Court) (No. 7 (Alexander Hamilton)) (taxation)

66: *FERC v. Mississippi*, 456 U.S. 742 (1982)

791 (O'Connor, J., concurring in the judgment in part and dissenting in part) (No. 15, at 93 (Alexander Hamilton)) (federalism)

792 (O'Connor, J., concurring in the judgment in part and dissenting in part) (No. 15, at 95-96 (Alexander Hamilton)) (federalism)

792 (O'Connor, J., concurring in the judgment in part and dissenting in part) (No. 16, at 101-02 (Alexander Hamilton)) (federalism)

793 (O'Connor, J., concurring in the judgment in part and dissenting in part) (No. 16, at 103 (Alexander Hamilton)) (federalism)

796 n.35 (O'Connor, J., concurring in the judgment in part and dissenting in part) (No. 45, at 312-13 (James Madison)) (federalism; taxation)

67: *Flast v. Cohen*, 392 U.S. 83 (1968)

130 & n.20 (Harlan II, J., dissenting) (No. 80, at 535 (Alexander Hamilton)) (judicial power; jurisdiction)

68: *Florida v. Georgia*, 58 U.S. (17 How.) 478 (1854)

518 (Curtis, J., dissenting) (No. 81, at 548-49 (Alexander Hamilton)) (sovereign immunity)

520 (Curtis, J., dissenting) (general citation) (sovereign immunity)

69: Fort Leavenworth R.R. v. Lowe, 114 U.S. 525 (1885)

529 (Field, J., Opinion of the Court) (No. 43, at 289 (James Madison)) (jurisdiction; military)

530 (Field, J., Opinion of the Court) (No. 43, at 289-90 (James Madison)) (jurisdiction; legislative power; military)

70: Fox v. Ohio, 46 U.S. (5 How.) 410 (1847)

439 (McLean, J., dissenting) (No. 32, at 200 (Alexander Hamilton)) (federalism)

71: Freytag v. Commissioner, 501 U.S. 868 (1991)

870 (Blackmun, J., majority opinion) (No. 47, at 324 (James Madison)) (separation of powers)

903 (Scalia, J., concurring in part and concurring in the judgment) (No. 78, at 522 (Alexander Hamilton)) (judicial tenure)

905 (Scalia, J., concurring in part and concurring in the judgment) (No. 76, at 510-13 (Alexander Hamilton)) (separation of powers)

906 (Scalia, J., concurring in part and concurring in the judgment) (No. 48, at 332-34 (James Madison)) (separation of powers)

906 (Scalia, J., concurring in part and concurring in the judgment) (No. 49, at 339 (James Madison)) (legislative power; separation of powers)

906-07 (Scalia, J., concurring in part and concurring in the judgment) (No. 73, at 492 (Alexander Hamilton)) (separation of powers)

907 (Scalia, J., concurring in part and concurring in the judgment) (No. 51, at 348-49 (James Madison (or Alexander Hamilton))) (separation of powers)

907 (Scalia, J., concurring in part and concurring in the judgment) (No. 78 (Alexander Hamilton)) (separation of powers)

907 (Scalia, J., concurring in part and concurring in the judgment) (No. 79 (Alexander Hamilton)) (separation of powers)

72: Furman v. Georgia, 408 U.S. 238 (1972)

466 (Rehnquist, J., dissenting) (No. 78 (Alexander Hamilton)) (judicial power; republicanism)

469 (Rehnquist, J., dissenting) (general citation) (checks and balances; separation of powers)

470 (Rehnquist, J., dissenting) (No. 51, at 349 (James Madison (or Alexander Hamilton))) (checks and balances; separation of powers)

73: Galloway v. United States, 319 U.S. 372 (1943)

397-98 & n.2 (Black, J., dissenting) (No. 81, at 550 (Alexander Hamilton)) (juries)

397-98 & n.2 (Black, J., dissenting) (No. 83, at 562 (Alexander Hamilton)) (juries)

400 (Black, J., dissenting) (general citation) (juries)

74: Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528 (1985)

550 (Blackmun, J., majority opinion) (No. 39, at 256 (James Madison)) (federalism)

551 (Blackmun, J., majority opinion) (No. 46, at 319 (James Madison)) (federalism)

551-52 (Blackmun, J., majority opinion) (No. 62, at 417 (James Madison (or Alexander Hamilton))) (federalism)

552 (Blackmun, J., majority opinion) (No. 43, at 296 (James Madison)) (federalism)

- 567 (Powell, J., dissenting) (No. 78 (Alexander Hamilton)) (commerce power; federalism; judicial power)
- 570 (Powell, J., dissenting) (No. 39, at 256 (James Madison)) (federalism)
- 570-71 (Powell, J., dissenting) (No. 45, at 313 (James Madison)) (federalism)
- 571 (Powell, J., dissenting) (No. 17, at 107 (Alexander Hamilton)) (federalism)
- 571-72 (Powell, J., dissenting) (No. 46, at 316 (James Madison)) (federalism)
- 572 (Powell, J., dissenting) (No. 7 (Alexander Hamilton)) (commerce power)
- 572 (Powell, J., dissenting) (No. 11 (Alexander Hamilton)) (commerce power)
- 572 (Powell, J., dissenting) (No. 22 (Alexander Hamilton)) (commerce power)
- 572 (Powell, J., dissenting) (No. 42 (James Madison)) (commerce power)
- 572 (Powell, J., dissenting) (No. 45 (James Madison)) (commerce power)
- 575 n. 18 (Powell, J., dissenting) (No. 17, at 107 (Alexander Hamilton)) (federalism)
- 575 n.18 (Powell, J., dissenting) (No. 46, at 316 (James Madison)) (federalism)
- 582 (O'Connor, J., dissenting) (No. 17, at 106-08 (Alexander Hamilton)) (federalism)
- 582 (O'Connor, J., dissenting) (No. 45, at 313 (James Madison)) (federalism)

582 (O'Connor, J., dissenting) (No. 51, at 350-51 (James Madison (or Alexander Hamilton))) (federalism; separation of powers)

75: *Garland, Ex parte*, 71 U.S. (4 Wall.) 333 (1866)

388 (Miller, J., dissenting) (No. 78, at 523 (Alexander Hamilton)) (separation of powers)

76: *Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539 (1963)

574 & n.10 (Douglas, J., concurring) (No. 51, at 351-52 (James Madison (or Alexander Hamilton))) (factions; religion)

77: *Gilman v. City of Philadelphia*, 70 U.S. (3 Wall.) 713 (1865)

730 & n.* (Swayne, J., Opinion of the Court) (No. 32, at 200 (Alexander Hamilton)) (federalism)

78: *Glidden Co. v. Zdanok*, 370 U.S. 530 (1962)

551 (Harlan II, J., plurality opinion) (No. 81, at 546 (Alexander Hamilton)) (independent judiciary; jurisdiction)

557-58 (Harlan II, J., plurality opinion) (No. 80, at 535 (Alexander Hamilton)) (judicial power)

558 (Harlan II, J., plurality opinion) (No. 22, at 143 (Alexander Hamilton)) (judicial power)

563-64 (Harlan II, J., plurality opinion) (No. 81, at 549 (Alexander Hamilton)) (judicial power; sovereign immunity)

567-68 (Harlan II, J., plurality opinion) (No. 80, at 541 (Alexander Hamilton)) (judicial power; jurisdiction)

594-96 (Douglas, J., dissenting) (No. 79, at 531-33 (Alexander Hamilton)) (independent judiciary)

79: Goldstein v. California, 412 U.S. 546 (1973)

552-53 & n.8 (Burger, C.J., majority opinion) (No. 32, at 199-200 (Alexander Hamilton)) (federalism)

554-55 (Burger, C.J., majority opinion) (No. 32, at 202 (Alexander Hamilton)) (federalism)

555-56 & n.11 (Burger, C.J., majority opinion) (No. 43, at 288 (James Madison)) (copyright)

559 & n.14 (Burger, C.J., majority opinion) (No. 42, at 283-84 (James Madison)) (copyright; taxation)

572 & n.1 (Douglas, J., dissenting) (No. 43, at 288 (James Madison)) (copyright; patent)

80: Gray v. Sanders, 372 U.S. 368 (1963)

377 n.8 (Douglas, J., Opinion of the Court) (No. 68, at 460-61 (Alexander Hamilton)) (electoral college)

81: Green v. United States, 356 U.S. 165 (1958)

215 n.32 (Black, J., dissenting) (No. 83 (Alexander Hamilton)) (criminal law and procedure; juries)

82: Gregory v. Ashcroft, 501 U.S. 452 (1991)

457-58 (O'Connor, J., majority opinion) (No. 45, at 313 (James Madison)) (federalism)

459 (O'Connor, J., majority opinion) (No. 28, at 179 (Alexander Hamilton)) (federalism)

459 (O'Connor, J., majority opinion) (No. 51, 350-51 (James Madison (or Alexander Hamilton))) (federalism)

83: Griswold v. Connecticut, 381 U.S. 479 (1965)

488 n.3 (Goldberg, J., concurring) (No. 37, at 236 (James Madison)) (interpretation of words)

84: Gruber, *Ex parte*, 269 U.S. 302 (1925)

304 (Sutherland, J., Opinion of the Court) (No. 80, at 534-36, 540 (Alexander Hamilton)) (judicial power; foreign affairs)

85: Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473 (1981)

478 (Powell, J., majority opinion) (No. 82 (Alexander Hamilton)) (federalism)

481 (Powell, J., majority opinion) (No. 82, at 555 (Alexander Hamilton)) (jurisdiction)

86: Gutierrez de Martinez v. Lamagno, 115 S. Ct. 2227 (1995)

2233 (Ginsburg, J., majority opinion) (No. 10, at 59 (James Madison)) (self-interested judgments)

2238 (O'Connor, J., concurring in part and concurring in the judgment) (No. 10, at 59 (James Madison)) (self-interested judgments)

2243 (Souter, J., dissenting) (No. 10, at 59 (James Madison)) (self-interested judgments)

87: Haig v. Agee, 453 U.S. 280 (1981)

294 n.24 (Burger, C.J., majority opinion) (No. 64, at 434-38 (John Jay)) (foreign affairs)

308 (Burger, C.J., majority opinion) (No. 64, at 434-36 (John Jay)) (foreign affairs)

88: Hall v. De Cuir, 95 U.S. (5 Otto) 485 (1877)

516 (Clifford, J., concurring) (No. 32, at 200 (Alexander Hamilton)) (federalism)

89: Hanover Nat'l Bank v. Moyses, 186 U.S. 181 (1902)

187 (Fuller, C.J., Opinion of the Court) (No. 42, at 287 (James Madison)) (bankruptcy)

90: Hans v. Louisiana, 134 U.S. 1 (1890)

12-13 (Bradley, J., Opinion of the Court) (No. 81, at 548-49 (Alexander Hamilton)) (sovereign immunity)

91: Harmelin v. Michigan, 501 U.S. 957 (1991)

977 n.7 (Scalia, J.) (No. 24, at 153 n.* (Alexander Hamilton)) (bills of rights, state; state constitutions)

977 n.7 (Scalia, J.) (No. 47, at 327-31 (James Madison)) (bills of rights, state; state constitutions)

92: Heath v. Alabama, 474 U.S. 82 (1985)

93 (O'Connor, J., majority opinion) (No. 9, at 55 (Alexander Hamilton)) (criminal law and procedure; federalism)

93: Herrera v. Collins, 506 U.S. 390 (1993)

413-14 (Rehnquist, C.J., majority opinion) (No. 74, at 501 (Alexander Hamilton)) (criminal law and procedure)

94: Hines v. Davidowitz, 312 U.S. 52 (1941)

62 & n.9 (Black, J., Opinion of the Court) (No. 3 (John Jay)) (foreign affairs)

62 & n.9 (Black, J., Opinion of the Court) (No. 4 (John Jay)) (foreign affairs)

62 & n.9 (Black, J., Opinion of the Court) (No. 5 (John Jay)) (foreign affairs)

62 & n.9 (Black, J., Opinion of the Court) (No. 42 (James Madison)) (foreign affairs)

62 & n.9 (Black, J., Opinion of the Court) (No. 80 (Alexander Hamilton)) (foreign affairs)

64 n.12 (Black, J., Opinion of the Court) (No. 80, at 535-36 (Alexander Hamilton)) (foreign affairs)

- 64 n.13 (Black, J., Opinion of the Court) (No. 3, at 14 (John Jay)) (foreign affairs; international law)
- 68 n.21 (Black, J., Opinion of the Court) (No. 32 (Alexander Hamilton)) (federalism; taxation)
- 73 n.35 (Black, J., Opinion of the Court) (No. 42, at 286-87 (James Madison)) (naturalization)
- 95:** *Hoffman v. Connecticut Dep't of Income Maintenance*, 492 U.S. 96 (1989)
- 111 (Marshall, J., dissenting) (No. 42, at 287 (James Madison)) (commerce power; bankruptcy)
- 96:** *Holder v. Hall*, 114 S. Ct. 2581 (1994)
- 2623 (Blackmun, J., dissenting) (No. 69, at 462 (Alexander Hamilton)) (county government; separation of powers; voting)
- 97:** *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934)
- 427 & n.7 (Hughes, C.J., Opinion of the Court) (No. 44, at 301-02 (James Madison)) (contracts, obligation of)
- 463 (Sutherland, J., dissenting) (No. 7, at 42-43 (Alexander Hamilton)) (contracts, obligation of)
- 463-64 (Sutherland, J., dissenting) (No. 44, at 301-02 (James Madison)) (contracts, obligation of)
- 98:** *Houston v. Moore*, 18 U.S. (5 Wheat.) 1 (1820)
- 49 n.b (Story, J., dissenting) (No. 32 (Alexander Hamilton)) (admiralty/maritime law; federalism; jurisdiction)
- 99:** *Howlett ex rel. Howlett v. Rose*, 496 U.S. 356 (1990)
- 368-69 (Stevens, J., majority opinion) (No. 82, at 555 (Alexander Hamilton)) (judicial power; jurisdiction)

100: Hubbard v. United States, 115 S. Ct. 1754 (1995)

1763 (Stevens, J.) (No. 78, at 529 (Alexander Hamilton))
(judicial discretion; judicial restraint)

1765 (Scalia, J., concurring in part and concurring in the judgment) (No. 78, at 529 (Alexander Hamilton)) (judicial discretion; judicial restraint)

1766 (Rehnquist, C.J., dissenting) (No. 78, at 529 (Alexander Hamilton)) (judicial discretion; judicial restraint)

101: Humphrey's Ex'r v. United States, 295 U.S. 602 (1935)

630 (Sutherland, J., Opinion of the Court) (No. 48, at 322 (James Madison)) (separation of powers)

102: Hynes v. Mayor of Oradell, 425 U.S. 610 (1976)

625 (Brennan, J., concurring in part) (general citation) (expression, freedom of)

103: INS v. Chadha, 462 U.S. 919 (1983)

947 (Burger, C.J., majority opinion) (No. 51 (James Madison (or Alexander Hamilton))) (separation of powers)

947 (Burger, C.J., majority opinion) (No. 73, at 494-95 (Alexander Hamilton)) (separation of powers)

948 (Burger, C.J., majority opinion) (No. 73, at 495 (Alexander Hamilton)) (separation of powers)

949 (Burger, C.J., majority opinion) (No. 22, at 145 (Alexander Hamilton)) (separation of powers)

950 (Burger, C.J., majority opinion) (No. 51, at 350 (James Madison (or Alexander Hamilton))) (separation of powers)

950 (Burger, C.J., majority opinion) (No. 62 (James Madison (or Alexander Hamilton))) (separation of powers)

956 n.21 (Burger, C.J., majority opinion) (No. 64 (John Jay))
(bicameralism; separation of powers)

956 n.21 (Burger, C.J., majority opinion) (No. 66 (Alexander
Hamilton)) (bicameralism; separation of powers)

956 n.21 (Burger, C.J., majority opinion) (No. 75 (Alexander
Hamilton)) (bicameralism; separation of powers)

960 (Powell, J., concurring in the judgment) (No. 47, at 324
(James Madison)) (separation of powers)

960 (Powell, J., concurring in the judgment) (No. 48 (James
Madison)) (separation of powers)

961-62 (Powell, J., concurring in the judgment) (No. 48, at 336-
37 (James Madison)) (separation of powers)

980 (White, J., dissenting) (No. 73, at 495 (Alexander Hamilton))
(separation of powers; veto power)

982 n.17 (White, J., dissenting) (No. 48, at 336-37 (James Madi-
son)) (separation of powers)

982 n.17 (White, J., dissenting) (No. 50, at 344-45 (James Madi-
son (or Alexander Hamilton))) (separation of powers)

999 n.25 (White, J., dissenting) (No. 47, at 325-26 (James Madi-
son)) (separation of powers)

104: *Illinois v. City of Milwaukee*, 406 U.S. 91 (1972)

105 n.6 (Douglas, J., majority opinion) (No. 80 (Alexander
Hamilton)) (federalism; jurisdiction)

105: *Industrial Union Dep't, AFL-CIO v. American Petroleum Inst.*, 448
U.S. 607 (1980)

673 (Rehnquist, J., concurring) (No. 48, at 332 (James Madison))
(separation of powers)

106: Jackson v. The Steamboat Magnolia, 61 U.S. (20 How.) 296 (1857)

332-33 (Campbell, J., dissenting) (No. 80, at 534, 538 (Alexander Hamilton)) (judicial power; jurisdiction)

107: Japan Line, Ltd. v. County of Los Angeles, 441 U.S. 434 (1979)

448 n.12 (Blackmun, J., majority opinion) (No. 42, at 279-83 (James Madison)) (commerce power)

108: Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 115 S. Ct. 1043 (1995)

1054-55 n.6 (Souter, J., majority opinion) (No. 80, at 538 (Alexander Hamilton)) (admiralty/maritime law)

109: Johnson v. Transportation Agency, 480 U.S. 616 (1987)

672 (Scalia, J., dissenting) (No. 62, at 417 (James Madison (or Alexander Hamilton))) (statutory interpretation)

110: Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123 (1951)

144 n.2 (Black, J., concurring) (No. 43, at 290 (James Madison)) (bills of attainder; treason)

111: Jones v. Rath Packing Co., 430 U.S. 519 (1977)

545 (Rehnquist, J., concurring in part and dissenting in part) (No. 32, at 202 (Alexander Hamilton)) (federalism)

112: Joseph v. Carter & Weekes Stevedoring Co., 330 U.S. 422 (1947)

428 n.8 (Burton, J., Opinion of the Court) (No. 7 (Alexander Hamilton)) (commerce power; taxation)

428 n.8 (Burton, J., Opinion of the Court) (No. 22 (Alexander Hamilton)) (commerce power; taxation)

428 n.8 (Burton, J., Opinion of the Court) (No. 42 (James Madison)) (commerce power; taxation)

113: *Justices v. Murray*, 76 U.S. (9 Wall.) 274 (1869)

279-80 (Nelson, J., Opinion of the Court) (No. 82, at 555-56 (Alexander Hamilton)) (federalism; jurisdiction)

281 (Nelson, J., Opinion of the Court) (No. 81, at 549-52 (Alexander Hamilton)) (juries; jurisdiction; jurisdiction, Supreme Court)

114: *Kendall v. United States ex rel. Stokes*, 37 U.S. (12 Pet.) 524 (1838)

643-44 (Barbour, J., dissenting) (No. 82, at 555 (Alexander Hamilton)) (judicial power; jurisdiction)

644-45 (Barbour, J., dissenting) (No. 82, at 554 (Alexander Hamilton)) (jurisdiction)

115: *Kinsella v. United States ex rel. Singleton*, 361 U.S. 234 (1960)

268 n.18 (Whittaker, J., concurring in part and dissenting in part) (No. 41, at 273 (James Madison)) (military)

269 (Whittaker, J., concurring in part and dissenting in part) (No. 23, at 147 (Alexander Hamilton)) (military)

116: *Kring v. Missouri*, 107 U.S. (17 Otto) 221 (1883)

226 (Miller, J., Opinion of the Court) (No. 84, at 575 (Alexander Hamilton)) (bills of rights, state; ex post facto laws)

117: *Laird v. Tatum*, 408 U.S. 1 (1972)

21-22 & n.6 (Douglas, J., dissenting) (No. 41, at 271 (James Madison)) (military)

118: *Landgraf v. USI Film Prod.*, 114 S. Ct. 1483 (1994)

1498 n.20 (Stevens, J., majority opinion) (No. 44, at 301 (James Madison)) (ex post facto laws)

119: Lane County v. Oregon, 74 U.S. (7 Wall.) 71 (1868)

76 (Chase, C.J., Opinion of the Court) (No. 46, at 315 (James Madison)) (federalism)

120: Larson v. Valente, 456 U.S. 228 (1982)

245 & n.22 (Brennan, J., majority opinion) (No. 51, at 351-52 (James Madison (or Alexander Hamilton))) (factions)

121: Lee v. Runge, 404 U.S. 887 (1971)

888 (Douglas, J., dissenting) (No. 43 (James Madison)) (copyright; patent)

122: Legal Tender Case, 110 U.S. 421 (1884)

470 (Field, J., dissenting) (No. 44, at 301 (James Madison)) (contracts, obligation of)

123: Legal Tender Cases, 79 U.S. (12 Wall.) 457 (1870)

585 & n.† (Chase, C.J., dissenting) (No. 42, at 285 (James Madison)) (money/bills of credit/legal tender)

608 & n.* (Clifford, J., dissenting) (No. 42, at 285 (James Madison)) (money/bills of credit/legal tender)

608 & n.* (Clifford, J., dissenting) (No. 44, at 299-301 (James Madison)) (money/bills of credit/legal tender)

621 & n.† (Clifford, J., dissenting) (No. 44, at 299-301 (James Madison)) (money/bills of credit/legal tender)

640 & n.* (Field, J., dissenting) (No. 44, at 304-05 (James Madison)) (money/bills of credit/legal tender)

665-66 & n.* (Field, J., dissenting) (No. 84, at 579-80 (Alexander Hamilton)) (bills of rights)

124: *Leisy v. Hardin*, 135 U.S. 100 (1890)

109 (Fuller, C.J., Opinion of the Court) (No. 32, at 200 (Alexander Hamilton)) (federalism)

125: *Lichter v. United States*, 334 U.S. 742 (1948)

755-56 n.3 (Burton, J., Opinion of the Court) (No. 41, at 269 (James Madison)) (military)

756 n.3 (Burton, J., Opinion of the Court) (No. 23, at 147 (Alexander Hamilton)) (military)

126: *Lonchar v. Thomas*, 116 S. Ct. 1293 (1996)

1298 (Breyer, J., majority opinion) (No. 78, at 528 (Alexander Hamilton)) (habeas corpus)

127: *Loving v. United States*, 116 S. Ct. 1737 (1996)

1743 (Kennedy, J., majority opinion) (No. 47, at 325-26 (James Madison)) (separation of powers)

1748 (Kennedy, J., majority opinion) (No. 23, at 147 (Alexander Hamilton)) (military; separation of powers)

1754 (Thomas, J., concurring in the judgment) (general citation) (military; separation of powers)

128: *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992)

1072 n.7 (Stevens, J., dissenting) (No. 10, at 58-61 (James Madison)) (factions)

129: *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)

560 (Scalia, J., majority opinion) (No. 48, at 334 (James Madison)) (separation of powers)

130: Luther v. Borden, 48 U.S. (7 How.) 1 (1849)

53 (Woodbury, J., dissenting) (No. 78, at 525 (Alexander Hamilton)) (judicial power)

54 (Woodbury, J., dissenting) (No. 40 (James Madison)) (judicial power; political questions)

70 (Woodbury, J., dissenting) (No. 44, at 301 (James Madison)) (bills of attainder)

77 (Woodbury, J., dissenting) (No. 29 (Alexander Hamilton)) (executive power; judicial power)

131: Lynch v. United States, 292 U.S. 571 (1934)

580-81 & n.9 (Brandeis, J., Opinion of the Court) (No. 81, at 549 (Alexander Hamilton)) (sovereign immunity)

132: Lyng v. Northwest Indian Cemetery Protective Ass'n, 485 U.S. 439 (1988)

452 (O'Connor, J., majority opinion) (No. 10 (James Madison)) (factions)

133: M'Culloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819)

433-34 (Marshall, C.J., Opinion of the Court) (No. 31, at 196-97 (Alexander Hamilton)) (federalism; taxation)

134: MacDougall v. Green, 335 U.S. 281 (1948)

289-90 n.1 (Douglas, J., dissenting) (No. 62, at 416, 417 (James Madison (or Alexander Hamilton))) (federalism; representation)

135: Marshall v. Baltimore & Ohio R.R., 57 U.S. (16 How.) 314 (1853)

326 (Grier, J., Opinion of the Court) (No. 80, at 537 (Alexander Hamilton)) (corporations; jurisdiction; privileges and immunities)

351 (Campbell, J., dissenting) (No. 80, at 537 (Alexander Hamilton)) (corporations; jurisdiction; privileges and immunities)

136: *Martin v. Mott*, 25 U.S. (12 Wheat.) 19 (1827)

30 & n.a (Story, J., Opinion of the Court) (No. 29, at 181 (Alexander Hamilton)) (military)

137: *Massachusetts v. Mellon*, 262 U.S. 447 (1923)

481 (Sutherland, J., Opinion of the Court) (No. 80, at 536-37 (Alexander Hamilton)) (jurisdiction)

138: *Massachusetts v. Upton*, 466 U.S. 727 (1984)

737 (Stevens, J., concurring) (No. 84, at 579 (Alexander Hamilton)) (Bill of Rights, federal)

139: *Mayor of New York v. Miln*, 36 U.S. (11 Pet.) 102 (1837)

133 (Barbour, J., Opinion of the Court) (No. 45, at 313 (James Madison)) (federalism; police power; reserved powers)

140: *McAllister v. United States*, 141 U.S. 174 (1891)

197 (Field, J., dissenting) (No. 78, at 522-24 (Alexander Hamilton)) (judicial power; judicial tenure; separation of powers)

141: *McCleskey v. Kemp*, 481 U.S. 279 (1987)

310 n.31 (Powell, J., majority opinion) (No. 83, at 562 (Alexander Hamilton)) (criminal law and procedure)

142: *McIntyre v. Ohio Elections Comm'n*, 115 S. Ct. 1511 (1995)

1517 & n.6 (Stevens, J., majority opinion) (general citation) (expression, freedom of)

1525-26 (Thomas, J., concurring) (general citation) (expression, freedom of)

1528-29 (Thomas, J., concurring) (general citation) (expression, freedom of)

1530 (Thomas, J., concurring) (general citation) (expression, freedom of)

143: *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18 (1990)

28-29 n.10 (Brennan, J., majority opinion) (No. 82, at 555 (Alexander Hamilton)) (judicial power; jurisdiction)

144: *McPherson v. Blacker*, 146 U.S. 1 (1892)

36 (Fuller, C.J., Opinion of the Court) (No. 68 (Alexander Hamilton)) (electoral college)

145: *Metropolitan Wash. Airports Auth. v. Citizens for Abatement of Aircraft Noise, Inc.*, 501 U.S. 252 (1991)

273-74 (Stevens, J., majority opinion) (No. 48, at 332-34 (James Madison)) (separation of powers)

277 (Stevens, J., majority opinion) (No. 48, at 334 (James Madison)) (separation of powers)

285 (White, J., dissenting) (No. 51, at 350-51 (James Madison (or Alexander Hamilton))) (separation of powers; federalism)

286 (White, J., dissenting) (No. 48, at 333 (James Madison)) (separation of powers)

293 (White, J., dissenting) (No. 73, at 494 (Alexander Hamilton)) (separation of powers)

146: *Michelin Tire Corp. v. Wages*, 423 U.S. 276 (1976)

285 n.4 (Brennan, J., majority opinion) (No. 11 (Alexander Hamilton)) (commerce power; taxation)

285 n.4 (Brennan, J., majority opinion) (No. 12 (Alexander Hamilton)) (commerce power; taxation)

285 n.4 (Brennan, J., majority opinion) (No. 42 (James Madison)) (commerce power; taxation)

285 n.4 (Brennan, J., majority opinion) (No. 44 (James Madison)) (commerce power; taxation)

285 n.5 (Brennan, J., majority opinion) (No. 12 (Alexander Hamilton)) (commerce power; taxation)

292-93 n.12 (Brennan, J., majority opinion) (No. 12, at 75-76, 78-79 (Alexander Hamilton)) (commerce power; taxation)

293 n.12 (Brennan, J., majority opinion) (No. 30 (Alexander Hamilton)) (commerce power; taxation)

293 n.12 (Brennan, J., majority opinion) (No. 32 (Alexander Hamilton)) (commerce power; taxation)

293 n.12 (Brennan, J., majority opinion) (No. 35 (Alexander Hamilton)) (commerce power; taxation)

293 n.12 (Brennan, J., majority opinion) (No. 36 (Alexander Hamilton)) (commerce power; taxation)

147: *Miles v. Illinois Cent. R.R.*, 315 U.S. 698 (1942)

714 (Frankfurter, J., dissenting) (No. 82, at 555 (Alexander Hamilton)) (federalism; jurisdiction)

148: *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575 (1983)

584 (O'Connor, J., majority opinion) (No. 84, at 580 n.* (Alexander Hamilton)) (press, freedom of; taxation)

149: *Minnesota State Bd. for Community Colleges v. Knight*, 465 U.S. 271 (1984)

285 (O'Connor, J., majority opinion) (No. 10 (James Madison)) (republicanism)

150: Missouri v. Jenkins, 115 S. Ct. 2038 (1995)

2069 (Thomas, J., concurring) (No. 78, at 528-29 (Alexander Hamilton)) (independent judiciary)

2069 (Thomas, J., concurring) (No. 80, at 539-40 (Alexander Hamilton)) (equity)

2069 (Thomas, J., concurring) (No. 83, at 569 & n.* (Alexander Hamilton)) (judicial discretion)

2071 (Thomas, J., concurring) (No. 78, at 526 (Alexander Hamilton)) (judicial power)

151: Missouri v. Jenkin, 495 U.S. 33 (1990)

65 (Kennedy, J., concurring in part and concurring in the judgment) (No. 78, at 523 (Alexander Hamilton)) (separation of powers)

69 (Kennedy, J., concurring in part and concurring in the judgment) (No. 48, at 334 (James Madison)) (separation of powers)

81 (Kennedy, J., concurring in part and concurring in the judgment) (No. 51, at 352 (James Madison (or Alexander Hamilton))) (separation of powers)

152: Mistretta v. United States, 488 U.S. 361 (1989)

380-81 (Blackmun, J., majority opinion) (No. 47, at 324-26 (James Madison)) (separation of powers)

381 (Blackmun, J., majority opinion) (No. 51, at 349 (James Madison (or Alexander Hamilton))) (separation of powers)

382 n.12 (Blackmun, J., majority opinion) (No. 51, at 350 (James Madison (or Alexander Hamilton))) (separation of powers)

394 (Blackmun, J., majority opinion) (No. 47, at 326 (James Madison)) (separation of powers)

409 (Blackmun, J., majority opinion) (No. 48, at 332 (James Madison)) (separation of powers)

426 (Scalia, J., dissenting) (No. 47, at 325-26 (James Madison)) (separation of powers)

153: *Mora v. McNamara*, 389 U.S. 934 (1967)

937 n.7 (Douglas, J., dissenting) (No. 69, at 465 (Alexander Hamilton)) (executive power; military)

154: *Morrison v. Olson*, 487 U.S. 654 (1988)

694 (Rehnquist, C.J., majority opinion) (No. 47 (James Madison)) (separation of powers)

697 (Scalia, J., dissenting) (No. 47, at 324 (James Madison)) (separation of powers)

698 (Scalia, J., dissenting) (No. 51, at 349-50 (James Madison (or Alexander Hamilton))) (separation of powers)

698 (Scalia, J., dissenting) (No. 73, at 494 (Alexander Hamilton)) (separation of powers)

704 (Scalia, J., dissenting) (No. 51, at 349 (James Madison (or Alexander Hamilton))) (separation of powers)

705 (Scalia, J., dissenting) (No. 49, at 339 (James Madison)) (separation of powers)

711 (Scalia, J., dissenting) (No. 78, at 522 (Alexander Hamilton)) (separation of powers)

720 (Scalia, J., dissenting) (No. 81, at 546 n.*, 551 n.† (Alexander Hamilton)) (separation of powers)

726 (Scalia, J., dissenting) (No. 51, at 349 (James Madison (or Alexander Hamilton))) (separation of powers)

729 (Scalia, J., dissenting) (No. 70, at 472 (Alexander Hamilton)) (separation of powers)

729 (Scalia, J., dissenting) (No. 70, at 476 (Alexander Hamilton))
(separation of powers)

155: Myers v. United States, 272 U.S. 52 (1926)

136-37, 148 (Taft, C.J., Opinion of the Court) (No. 77, at 515
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184 (McReynolds, J., dissenting) (No. 17 (Alexander Hamilton))
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184 (McReynolds, J., dissenting) (No. 51, at 350 (James Madison
(or Alexander Hamilton))) (legislative power; republicanism)

186 (McReynolds, J., dissenting) (No. 75, at 504 (Alexander
Hamilton)) (legislative power)

203 (McReynolds, J., dissenting) (general citation) (appoint-
ment/removal power)

208 (McReynolds, J., dissenting) (No. 77, at 515-16 (Alexander
Hamilton)) (appointment/removal power)

229 (McReynolds, J., dissenting) (No. 45, at 313 (James Madi-
son)) (delegated powers)

235 (McReynolds, J., dissenting) (No. 48, at 335-36 (James
Madison)) (separation of powers)

237 (McReynolds, J., dissenting) (No. 47 (James Madison))
(executive power)

293 (Brandeis, J., dissenting) (No. 77, at 515 (Alexander Hamil-
ton)) (appointment/removal power; separation of powers)

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857 n.1 (Brennan, J., dissenting) (No. 31, at 195 (Alexander
Hamilton)) (commerce power; federalism)

876 (Brennan, J., dissenting) (No. 45, at 311-12 (James Madi-
son)) (commerce power; federalism)

876 (Brennan, J., dissenting) (No. 46, at 317-18 (James Madison)) (commerce power; federalism)

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157: *National Mut. Ins. Co. v. Tidewater Transfer Co.*, 337 U.S. 582 (1949)

621 n.16 (Rutledge, J., concurring) (No. 80, at 537-38 (Alexander Hamilton)) (jurisdiction)

635 (Vinson, C.J., dissenting) (No. 80 (Alexander Hamilton)) (jurisdiction)

635-36 (Vinson, C.J., dissenting) (No. 81, at 552 (Alexander Hamilton)) (jurisdiction)

636 (Vinson, C.J., dissenting) (No. 82, at 557 (Alexander Hamilton)) (jurisdiction)

642 n.21 (Vinson, C.J., dissenting) (No. 81, at 549 (Alexander Hamilton)) (sovereign immunity)

158: *National Prohibition Cases*, 253 U.S. 350 (1920)

399 (McKenna, J., dissenting) (No. 32, at 199-200 (Alexander Hamilton)) (federalism)

159: *Nevada v. Hall*, 440 U.S. 410 (1979)

419 & n.16 (Stevens, J., majority opinion) (No. 81, at 548 (Alexander Hamilton)) (sovereign immunity)

436 (Rehnquist, J., dissenting) (No. 81, at 548-49 (Alexander Hamilton)) (sovereign immunity)

440 (Rehnquist, J., dissenting) (No. 81, at 549 (Alexander Hamilton)) (sovereign immunity)

160: New York v. United States, 505 U.S. 144 (1992)

- 155 (O'Connor, J., majority opinion) (No. 82, at 553 (Alexander Hamilton)) (federalism)
- 158 (O'Connor, J., majority opinion) (No. 42, at 283 (James Madison)) (commerce power)
- 163 (O'Connor, J., majority opinion) (No. 15, at 93 (Alexander Hamilton)) (federalism)
- 180 (O'Connor, J., majority opinion) (No. 42, at 284 (James Madison)) (commerce power)
- 182 (O'Connor, J., majority opinion) (No. 51, at 350-53 (James Madison (or Alexander Hamilton))) (federalism)
- 188 (O'Connor, J., majority opinion) (No. 39, at 256 (James Madison)) (federalism)

161: New York v. United States, 326 U.S. 572 (1946)

- 596 (Douglas, J., dissenting) (No. 30 (Alexander Hamilton)) (taxation)
- 596 (Douglas, J., dissenting) (No. 31 (Alexander Hamilton)) (taxation)
- 596 (Douglas, J., dissenting) (No. 32 (Alexander Hamilton)) (taxation)
- 596 (Douglas, J., dissenting) (No. 33 (Alexander Hamilton)) (taxation)
- 596 (Douglas, J., dissenting) (No. 34 (Alexander Hamilton)) (taxation)
- 596 (Douglas, J., dissenting) (No. 35 (Alexander Hamilton)) (taxation)
- 596 (Douglas, J., dissenting) (No. 36 (Alexander Hamilton)) (taxation)

162: *Newberry v. United States*, 256 U.S. 232 (1921)

- 248 (McReynolds, J., Opinion of the Court) (No. 58 (James Madison (or Alexander Hamilton))) (elections)
- 248 (McReynolds, J., Opinion of the Court) (No. 59 (Alexander Hamilton)) (elections)
- 248 (McReynolds, J., Opinion of the Court) (No. 60 (Alexander Hamilton)) (elections)
- 249 (McReynolds, J., Opinion of the Court) (No. 45, at 311 (James Madison)) (federalism)
- 255-56 (McReynolds, J., Opinion of the Court) (No. 60, at 408-09 (Alexander Hamilton)) (elections)
- 256 (McReynolds, J., Opinion of the Court) (No. 52 (James Madison (or Alexander Hamilton))) (elections)
- 256 (McReynolds, J., Opinion of the Court) (No. 59 (Alexander Hamilton)) (elections)
- 268 (White, C.J., concurring in part) (general citation) (elections)
- 283 (Pitney, Brandeis, and Clarke, JJ., concurring) (No. 59, at 398 (Alexander Hamilton)) (elections)
- 283-84 (Pitney, Brandeis, and Clarke, JJ., concurring in part) (No. 60, at 403-08 (Alexander Hamilton)) (elections)

163: *Nixon v. Administrator of Gen. Servs.*, 433 U.S. 425 (1977)

- 442 & n.5 (Brennan, J., majority opinion) (No. 47, at 325-26 (James Madison)) (separation of powers)
- 507 n.2 (Burger, C.J., dissenting) (No. 48, at 334 (James Madison)) (separation of powers)
- 511 n.6 (Burger, C.J., dissenting) (No. 47, at 325-26 (James Madison)) (separation of powers)

511 n.6 (Burger, C.J., dissenting) (No. 48, at 332 (James Madison)) (separation of powers)

514 (Burger, C.J., dissenting) (No. 48, at 335 (James Madison)) (separation of powers)

559 n.7 (Rehnquist, J., dissenting) (general citation) (judicial power; separation of powers)

164: Nixon v. Fitzgerald, 457 U.S. 731 (1982)

771 (White, J., dissenting) (general citation) (impeachment; president)

772 n.12 (White, J., dissenting) (No. 65, at 439 (Alexander Hamilton)) (impeachment)

773 (White, J., dissenting) (No. 77, at 520 (Alexander Hamilton)) (impeachment; president)

165: Nixon v. United States, 506 U.S. 224 (1993)

233 (Rehnquist, C.J., majority opinion) (No. 65, at 440 (Alexander Hamilton)) (impeachment; judicial power; judicial review)

233 (Rehnquist, C.J., majority opinion) (No. 78, at 524 (Alexander Hamilton)) (impeachment; judicial power; judicial review)

234 (Rehnquist, C.J., majority opinion) (No. 65, at 442 (Alexander Hamilton)) (impeachment)

237 (Rehnquist, C.J., majority opinion) (No. 60, at 409 (Alexander Hamilton)) (officeholding qualifications)

241 (White, J., concurring in the judgment) (No. 66, at 446 (Alexander Hamilton)) (impeachment)

242 (White, J., concurring in the judgment) (No. 65 (Alexander Hamilton)) (impeachment)

- 242 (White, J., concurring in the judgment) (No. 66 (Alexander Hamilton)) (impeachment)
- 244 (White, J., concurring in the judgment) (No. 65, at 441 (Alexander Hamilton)) (impeachment)
- 244 (White, J., concurring in the judgment) (No. 66 (Alexander Hamilton)) (impeachment)
- 249 (White, J., concurring in the judgment) (No. 65, at 441 (Alexander Hamilton)) (impeachment)
- 166:** *Norman v. Reed*, 502 U.S. 279 (1992)
- 299-300 (Scalia, J., dissenting) (No. 10, at 63-64 (James Madison)) (factions)
- 167:** *Northeast Bancorp, Inc. v. Board of Governors*, 472 U.S. 159 (1985)
- 174 (Rehnquist, J., majority opinion) (No. 7, at 38-40 (Alexander Hamilton)) (commerce power)
- 174 (Rehnquist, J., majority opinion) (No. 22, at 135-37 (Alexander Hamilton)) (commerce power)
- 168:** *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982)
- 57 (Brennan, J., plurality opinion) (No. 47, at 324 (James Madison)) (separation of powers)
- 58 (Brennan, J., plurality opinion) (No. 78, at 529 (Alexander Hamilton)) (judicial power; separation of powers)
- 59 n.10 (Brennan, J., plurality opinion) (No. 78 (Alexander Hamilton)) (independent judiciary; separation of powers)
- 60 (Brennan, J., plurality opinion) (No. 79, at 531 (Alexander Hamilton)) (judicial power; separation of powers)

87 n.39 (Brennan, J., plurality opinion) (No. 78, at 528 (Alexander Hamilton)) (independent judiciary; separation of powers)

87 n.39 (Brennan, J., plurality opinion) (No. 79 (Alexander Hamilton)) (independent judiciary; separation of powers)

87 n.39 (Brennan, J., plurality opinion) (No. 80 (Alexander Hamilton)) (independent judiciary; separation of powers)

87 n.39 (Brennan, J., plurality opinion) (No. 81 (Alexander Hamilton)) (independent judiciary; separation of powers)

87 n.39 (Brennan, J., plurality opinion) (No. 82 (Alexander Hamilton)) (independent judiciary; separation of powers)

113 (White, J., dissenting) (No. 78 (Alexander Hamilton)) (independent judiciary; separation of powers)

113 (White, J., dissenting) (No. 79 (Alexander Hamilton)) (independent judiciary; separation of powers)

113 (White, J., dissenting) (No. 80 (Alexander Hamilton)) (independent judiciary; separation of powers)

113 (White, J., dissenting) (No. 81 (Alexander Hamilton)) (independent judiciary; separation of powers)

113 (White, J., dissenting) (No. 82 (Alexander Hamilton)) (independent judiciary; separation of powers)

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531 (Sutherland, J., Opinion of the Court) (No. 48 (James Madison)) (separation of powers)

531 (Sutherland, J., Opinion of the Court) (No. 78, at 524 (Alexander Hamilton)) (independent judiciary)

531 (Sutherland, J., Opinion of the Court) (No. 79, at 531 (Alexander Hamilton)) (independent judiciary)

171: O'Malley v. Woodrough, 307 U.S. 277 (1939)

285 (Butler, J., dissenting) (No. 78, at 522-24 (Alexander Hamilton)) (compensation of judges; independent judiciary)

285-86 (Butler, J., dissenting) (No. 79, at 531-32 (Alexander Hamilton)) (compensation of judges; independent judiciary)

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304-05 (Thompson, J.) (No. 44, at 301 (James Madison)) (contracts, obligation of)

306 (Thompson, J.) (No. 44, at 300-01 (James Madison)) (money/bills of credit/legal tender)

329-31 (Trimble, J.) (No. 44, at 301-02 (James Madison)) (contracts, obligation of)

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1336 (Souter, J., majority opinion) (No. 7 (Alexander Hamilton)) (commerce power)

1336 (Souter, J., majority opinion) (No. 11 (Alexander Hamilton)) (commerce power)

1336 (Souter, J., majority opinion) (No. 42 (James Madison)) (commerce power)

174: Oneida County v. Oneida Indian Nation, 470 U.S. 226 (1985)

234 n.4 (Powell, J., majority opinion) (No. 42, at 284 (James Madison)) (commerce power; Indian Commerce Clause)

175: Oregon v. Mitchell, 400 U.S. 112 (1970)

210-11 (Harlan II, J., dissenting) (No. 52, at 354 (James Madison (or Alexander Hamilton))) (voting qualifications)

211 (Harlan II, J., dissenting) (No. 60, at 409 (Alexander Hamilton)) (elections)

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178: Pacific States Tel. & Tel. Co. v. Oregon, 223 U.S. 118 (1912)

138 n.2 (White, C.J., Opinion of the Court) (general citation) (republicanism; taxation)

179: *Palmore v. United States*, 411 U.S. 389 (1973)

417-18 (Douglas, J., dissenting) (No. 79, at 531-32 (Alexander Hamilton)) (compensation of judges; independent judiciary)

180: *Parden v. Terminal Ry.*, 377 U.S. 184 (1964)

187 n.4 (Brennan, J., Opinion of the Court) (No. 81, at 548-49 (Alexander Hamilton)) (sovereign immunity)

191 n.9 (Brennan, J., Opinion of the Court) (No. 81, at 548 (Alexander Hamilton)) (sovereign immunity)

181: Passenger Cases, 48 U.S. (7 How.) 283 (1849)

- 396 (McLean, J.) (No. 32, at 200 (Alexander Hamilton)) (Import-Export Clause; taxation)
- 453 (McKinley, J.) (general citation) (Migration or Importation Clause; slavery)
- 471 (Taney, C.J., dissenting) (No. 32, at 203 (Alexander Hamilton)) (commerce power)
- 474-75 (Taney, C.J., dissenting) (No. 42, at 281-82 (James Madison)) (Migration or Importation Clause; slavery)
- 479-80 (Taney, C.J., dissenting) (No. 32 (Alexander Hamilton)) (commerce power; taxation)
- 503-04 (Daniel, J., dissenting) (general citation) (federalism; Import-Export Clause; taxation)
- 503-04 (Daniel, J., dissenting) (No. 32, at 199, 201 (Alexander Hamilton)) (federalism; Import-Export Clause; taxation)
- 511, 513 (Daniel, J., dissenting) (No. 42, at 281-82 (James Madison)) (Migration or Importation Clause; slavery)
- 526 (Woodbury, J., dissenting) (No. 42 (James Madison)) (immigration)
- 533 (Woodbury, J., dissenting) (No. 32 (Alexander Hamilton)) (federalism; taxation)
- 533 (Woodbury, J., dissenting) (No. 32, at 201 (Alexander Hamilton)) (federalism; Import-Export Clause; taxation)
- 543 (Woodbury, J., dissenting) (No. 42, at 282 (James Madison)) (Migration or Importation Clause; slavery)
- 545 (Woodbury, J., dissenting) (general citation) (commerce power; taxation)

554-55 (Woodbury, J., dissenting) (No. 82, at 553-54 (Alexander Hamilton)) (federalism)

182: *Patsy v. Board of Regents*, 457 U.S. 496 (1982)

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183: *Patterson v. McLean Credit Union*, 491 U.S. 164 (1989)

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184: *Payne v. Tennessee*, 501 U.S. 808 (1991)

849 (Marshall, J., dissenting) (No. 78, at 529 (Alexander Hamilton)) (judicial power; stare decisis)

185: *Pennsylvania v. Nelson*, 350 U.S. 497 (1956)

512 n.1 (Reed, J., dissenting) (No. 32 (Alexander Hamilton)) (expression, freedom of; sedition)

186: *Pennsylvania v. Union Gas Co.*, 491 U.S. 1 (1989)

19 (Brennan, J.) (No. 81, at 549 (Alexander Hamilton)) (jurisdiction; sovereign immunity)

33 (Scalia, J., dissenting) (No. 81, at 549 (Alexander Hamilton)) (jurisdiction; sovereign immunity)

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340 (Stevens, J., majority opinion) (No. 25, at 161-62 (Alexander Hamilton)) (military)

354 n.28 (Stevens, J., majority opinion) (No. 23, at 148 (Alexander Hamilton)) (military)

188: *Piqua Branch of the State Bank v. Knoop*, 57 U.S. (16 How.) 369 (1853)

397 (Catron, J., dissenting) (No. 30, at 188 (Alexander Hamilton)) (taxation)

189: *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)

996 (Scalia, J., concurring in the judgment in part and dissenting in part) (No. 78, at 523 (Alexander Hamilton)) (judicial power)

190: *Planters' Bank v. Sharp*, 47 U.S. (6 How.) 301 (1848)

319 (Woodbury, J., Opinion of the Court) (No. 44, at 301 (James Madison)) (contracts, obligation of; vested rights)

191: *Plaquemines Tropical Fruit Co. v. Henderson*, 170 U.S. 511 (1898)

514-16 (Harlan, J., Opinion of the Court) (No. 82, at 553-55 (Alexander Hamilton)) (jurisdiction)

192: *Plaut v. Spendthrift Farm, Inc.*, 115 S. Ct. 1447 (1995)

1454 (Scalia, J., Opinion of the Court) (No. 48, at 333, 336, 337 (James Madison)) (factions; separation of powers)

1454-55 (Scalia, J., Opinion of the Court) (No. 81, at 545 (Alexander Hamilton)) (judicial power; legislative power; separation of powers)

1455 (Scalia, J., Opinion of the Court) (No. 78, at 522, 523, 525 (Alexander Hamilton)) (judicial power; legislative power; separation of powers)

1456 (Scalia, J., Opinion of the Court) (No. 81, at 545 (Alexander Hamilton)) (legislative power)

1464 (Breyer, J., concurring) (No. 47, at 324 (James Madison)) (legislative power; separation of powers)

1464 (Breyer, J., concurring) (No. 48, at 335 (James Madison))
(legislative power; separation of powers)

1465 (Breyer, J., concurring) (No. 48 (James Madison)) (separation of powers)

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374 (White, J., Opinion of the Court) (No. 42 (James Madison))
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624 (Fuller, C.J., Opinion of the Court) (No. 30, at 190 (Alexander Hamilton)) (taxation)

624 (Fuller, C.J., Opinion of the Court) (No. 36, at 225 (Alexander Hamilton)) (taxation)

625 (Fuller, C.J., Opinion of the Court) (general citation)
(taxation)

627 (Fuller, C.J., Opinion of the Court) (general citation)
(taxation)

627 (Fuller, C.J., Opinion of the Court) (No. 1 (Alexander Hamilton)) (foreign affairs; treaties)

627 (Fuller, C.J., Opinion of the Court) (No. 2 (John Jay))
(foreign affairs; treaties)

627 (Fuller, C.J., Opinion of the Court) (No. 3 (John Jay))
(foreign affairs; treaties)

627 (Fuller, C.J., Opinion of the Court) (No. 4 (John Jay))
(foreign affairs; treaties)

627 (Fuller, C.J., Opinion of the Court) (No. 5 (John Jay))
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558-59 (Fuller, C.J., Opinion of the Court) (general citation) (republicanism; taxation)

560 (Fuller, C.J., Opinion of the Court) (No. 46, at 315 (James Madison)) (federalism; taxation)

564 (Fuller, C.J., Opinion of the Court) (No. 36, at 226 (Alexander Hamilton)) (taxation)

564 (Fuller, C.J., Opinion of the Court) (No. 54, at 367 (James Madison (or Alexander Hamilton))) (taxation)

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540 & nn. 74-75 (Warren, C.J., Opinion of the Court) (No. 52, at 354-55 (James Madison (or Alexander Hamilton))) (officeholding qualifications)

551-52 & n.2 (Douglas, J., concurring) (No. 60, at 409 (Alexander Hamilton)) (officeholding qualifications; voting qualifications)

198: Prigg v. Pennsylvania, 41 U.S. (16 Pet.) 539 (1842)

616 (Story, J., Opinion of the Court) (No. 43, at 291 (James Madison)) (federalism)

199: Principality of Monaco v. Mississippi, 292 U.S. 313 (1934)

322-23 (Hughes, C.J., Opinion of the Court) (No. 81, at 549 (Alexander Hamilton)) (sovereign immunity)

324-25 (Hughes, C.J., Opinion of the Court) (No. 81, at 548-49 (Alexander Hamilton)) (sovereign immunity)

328 (Hughes, C.J., Opinion of the Court) (No. 80, at 537-38 (Alexander Hamilton)) (jurisdiction)

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468 (Kennedy, J., concurring) (No. 48 (James Madison)) (separation of powers)

468 (Kennedy, J., concurring) (No. 49 (James Madison)) (separation of powers)

468 (Kennedy, J., concurring) (No. 50 (James Madison (or Alexander Hamilton))) (separation of powers)

468 (Kennedy, J., concurring) (No. 51 (James Madison (or Alexander Hamilton))) (separation of powers)

471 (Kennedy, J., concurring) (No. 78, at 526 (Alexander Hamilton)) (statutory interpretation)

483 (Kennedy, J., concurring) (No. 66, at 449 (Alexander Hamilton)) (appointment/removal power)

483 (Kennedy, J., concurring) (No. 76, at 512 (Alexander Hamilton)) (appointment/removal power)

483. n.4 (Kennedy, J., concurring) (No. 76, at 510-11 (Alexander Hamilton)) (appointment/removal power)

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312 (Stevens, J., majority opinion) (No. 7 (Alexander Hamilton)) (commerce power)

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465-66 (Rehnquist, J., majority opinion) (No. 42, at 287 (James Madison)) (bankruptcy; commerce power)

203: *Ray v. Blair*, 343 U.S. 214 (1952)

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10 n.13 (Black, J., plurality opinion) (No. 83 (Alexander Hamilton)) (criminal law and procedure; juries)

24 n.43 (Black, J., plurality opinion) (No. 41, at 271 (James Madison)) (criminal law and procedure; juries; military)

30 n.54 (Black, J., plurality opinion) (No. 26 (Alexander Hamilton)) (criminal law and procedure; juries; military)

30 n.54 (Black, J., plurality opinion) (No. 27 (Alexander Hamilton)) (criminal law and procedure; juries; military)

30 n.54 (Black, J., plurality opinion) (No. 28 (Alexander Hamilton)) (criminal law and procedure; juries; military)

30 n.54 (Black, J., plurality opinion) (No. 41 (James Madison)) (criminal law and procedure; juries; military)

36-37 n.66 (Black, J., plurality opinion) (No. 78, at 523-24 (Alexander Hamilton)) (criminal law and procedure; juries; military)

68 n.5 (Harlan II, J., concurring in the result) (No. 24, at 153 (Alexander Hamilton)) (military)

68-69 & n.6 (Harlan II, J., concurring in the result) (No. 23, at 147, 149, 150 (Alexander Hamilton)) (military)

206: *Richfield Oil Corp. v. State Bd. of Equalization*, 329 U.S. 69 (1946)

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207: *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980)

579 (Burger, C.J., plurality opinion) (No. 84 (Alexander Hamilton)) (Bill of Rights, federal)

208: *Romero v. International Terminal Operating Co.*, 358 U.S. 354 (1959)

361 n.8 (Frankfurter, J., Opinion of the Court) (No. 80, at 538 (Alexander Hamilton)) (jurisdiction)

364 & n.19 (Frankfurter, J., Opinion of the Court) (No. 80 (Alexander Hamilton)) (jurisdiction)

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210: *Schad v. Borough of Mount Ephraim*, 452 U.S. 61 (1981)

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211: *Schick v. Reed*, 419 U.S. 256 (1974)

263 (Burger, C.J., majority opinion) (No. 69, at 464 (Alexander Hamilton)) (executive power; pardon power)

263 n.6 (Burger, C.J., majority opinion) (No. 74, at 500-01 (Alexander Hamilton)) (executive power; pardon power)

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232 (Douglas, J., dissenting) (No. 76, at 514 (Alexander Hamilton)) (Incompatibility Clause)

213: *Scholey v. Rew*, 90 U.S. (23 Wall.) 331 (1874)

348 & n.† (Clifford, J., Opinion of the Court) (No. 36, at 226 (Alexander Hamilton)) (taxation)

214: *School Dist. v. Schempp*, 374 U.S. 203 (1963)

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503 (Campbell, J., concurring) (No. 38, at 248 (James Madison)) (territorial government)

578 (Curtis, J., dissenting) (No. 42, at 285-87 (James Madison))
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608 (Curtis, J., dissenting) (No. 38, at 248-49 (James Madison))
(territorial government)

608 (Curtis, J., dissenting) (No. 43 (James Madison)) (territorial
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216: *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225 (1964)

228 & n.4 (Black, J., Opinion of the Court) (No. 43, at 288
(James Madison)) (copyright; patent)

217: *Selective Serv. Sys. v. Minnesota Public Interest Research Group*,
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861 n.3 (Powell, J., concurring) (No. 4, at 18-19 (John Jay))
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861 n.3 (Powell, J., concurring) (No. 24 (Alexander Hamilton))
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861 n.3 (Powell, J., concurring) (No. 25, at 161 (Alexander
Hamilton)) (military)

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81, at 548 (Alexander Hamilton)) (federalism; sovereign
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1141 (Stevens, J., dissenting) (No. 81, at 549 (Alexander Hamil-
ton)) (sovereign immunity)

1166 (Souter, J., dissenting) (No. 81, at 548-49 (Alexander
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Chart 1
Citations by Essay Number

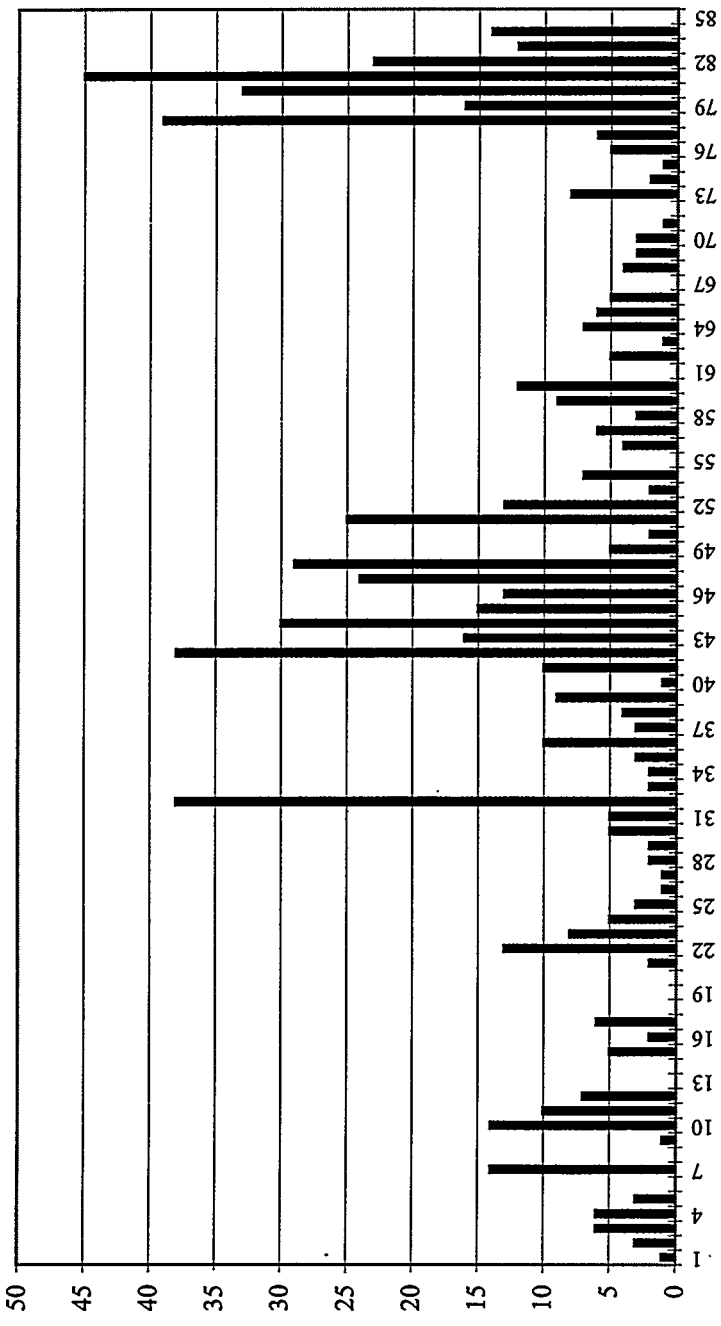


Chart 2
Total Number of Citations by Year

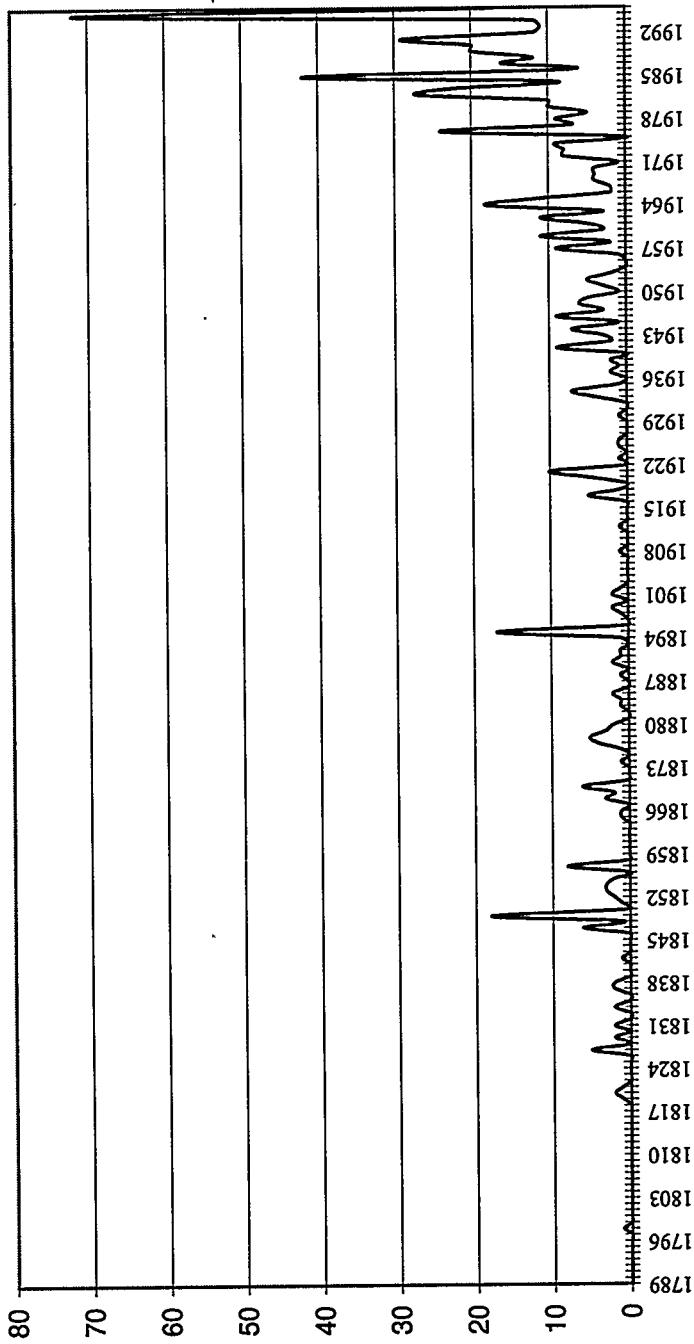


Chart 3
Number of Cases Citing per Year

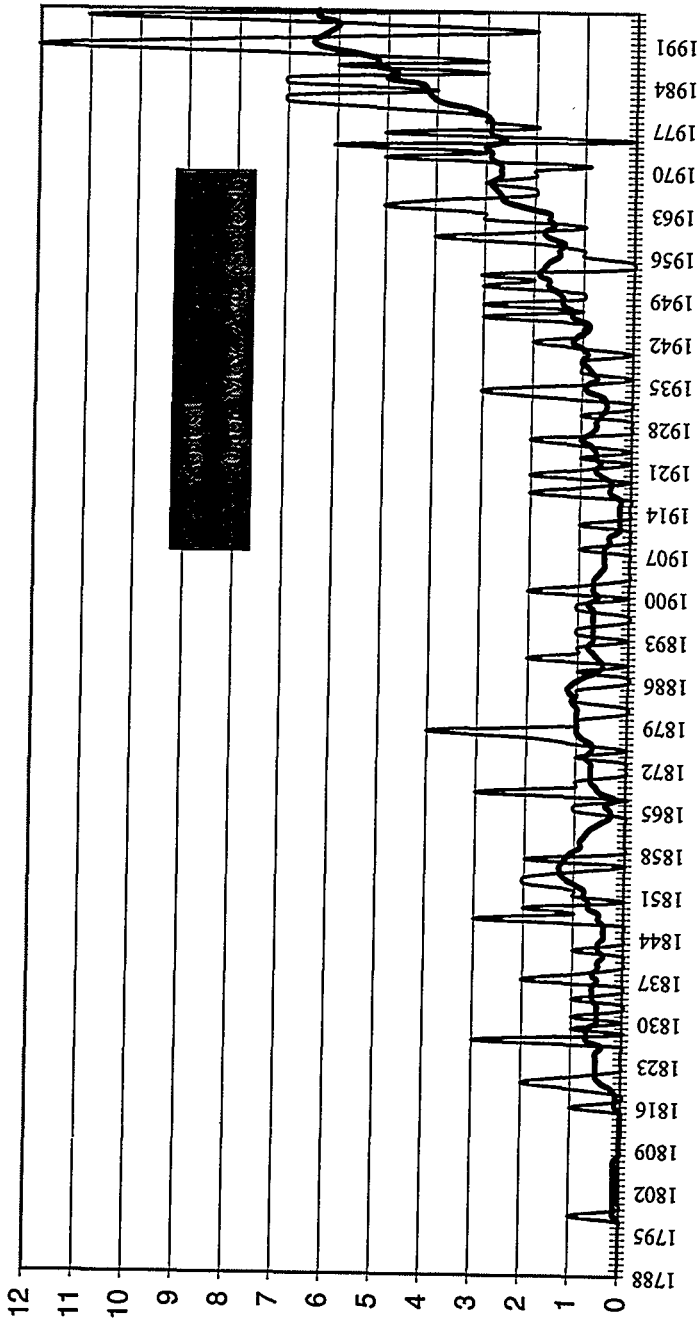


Chart 4
Citations by Justice

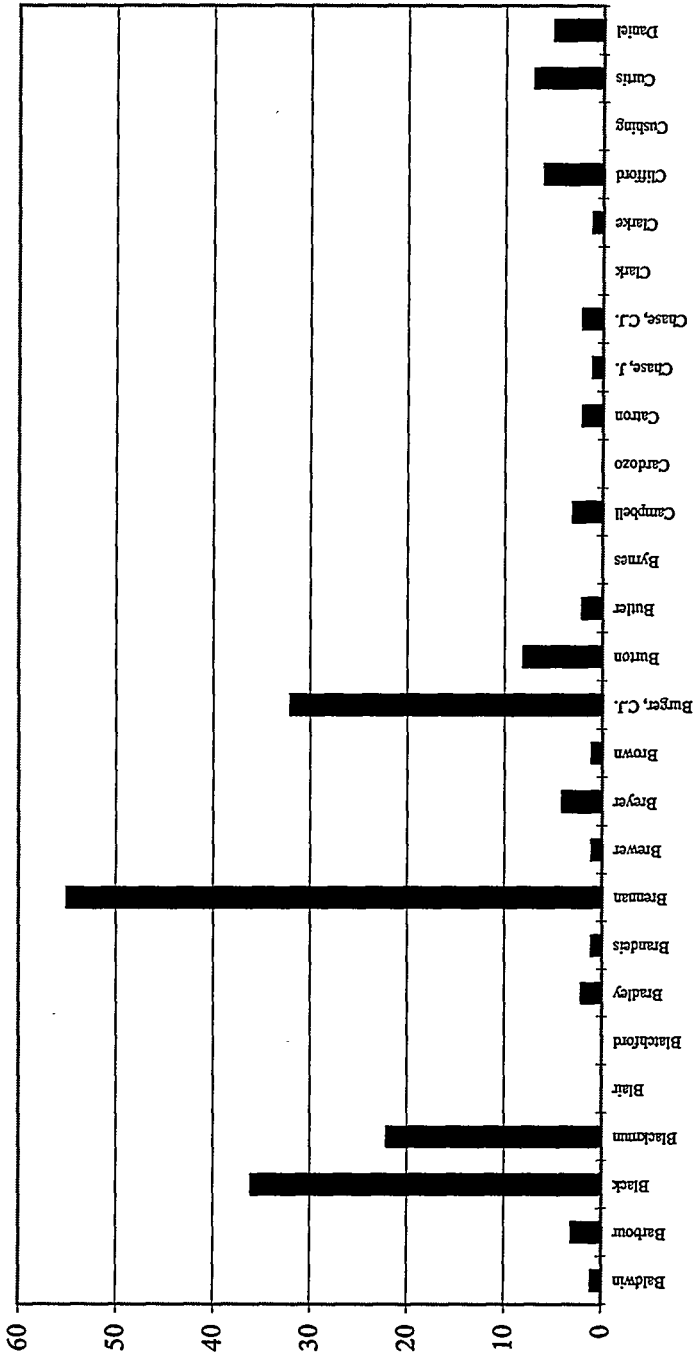


Chart 4
Citations by Justice (continued)

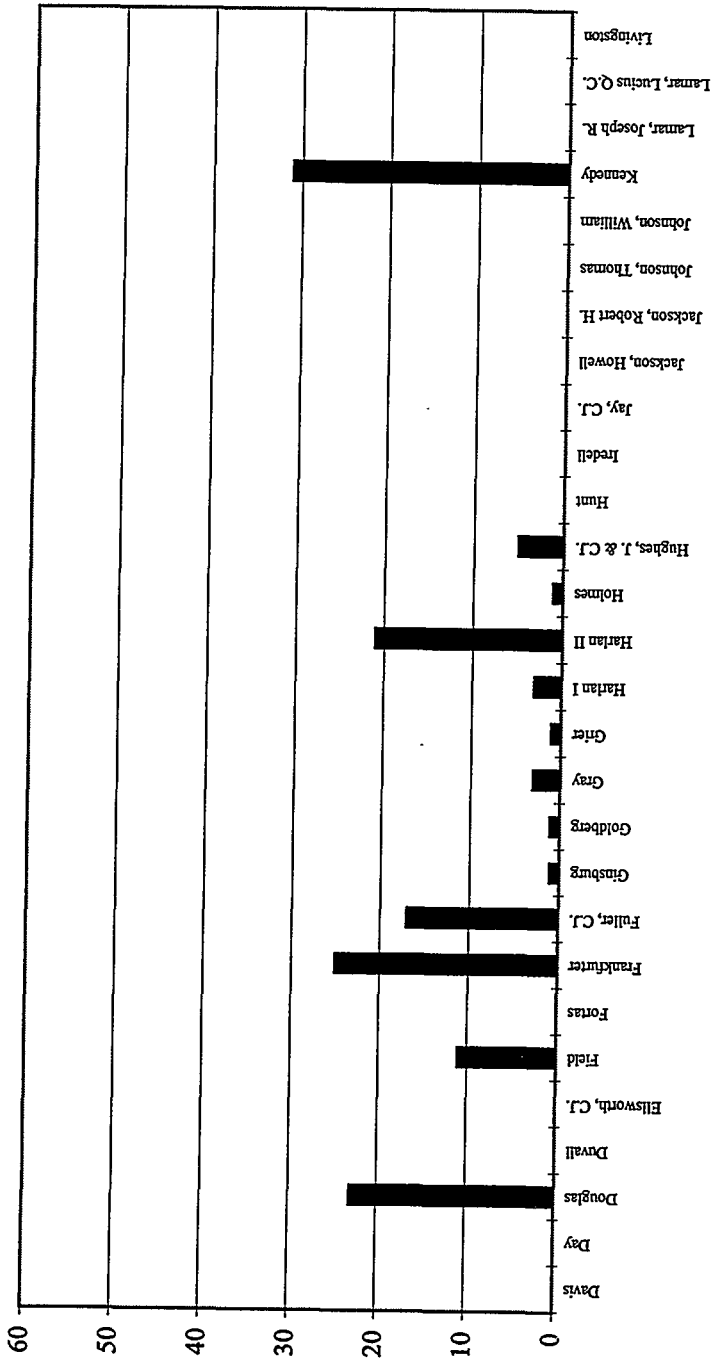


Chart 4
Citations by Justice (continued)

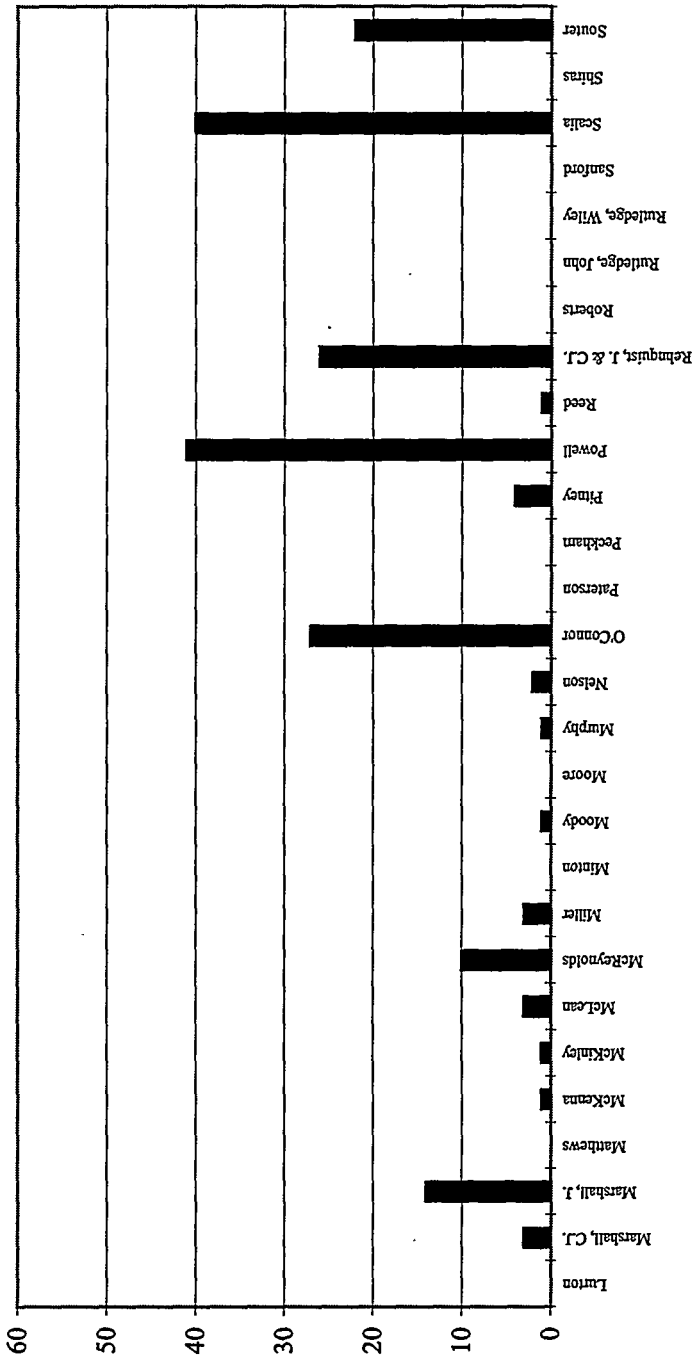
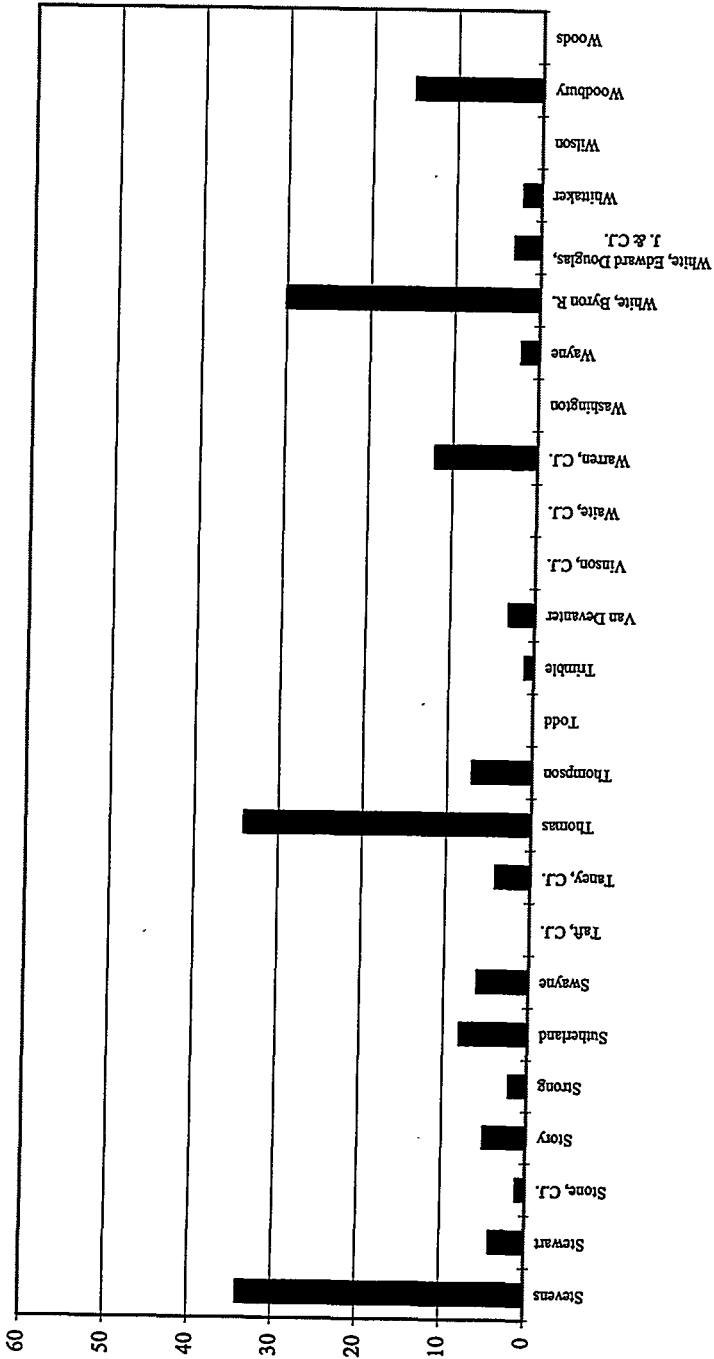


Chart 4
Citations by Justice (continued)



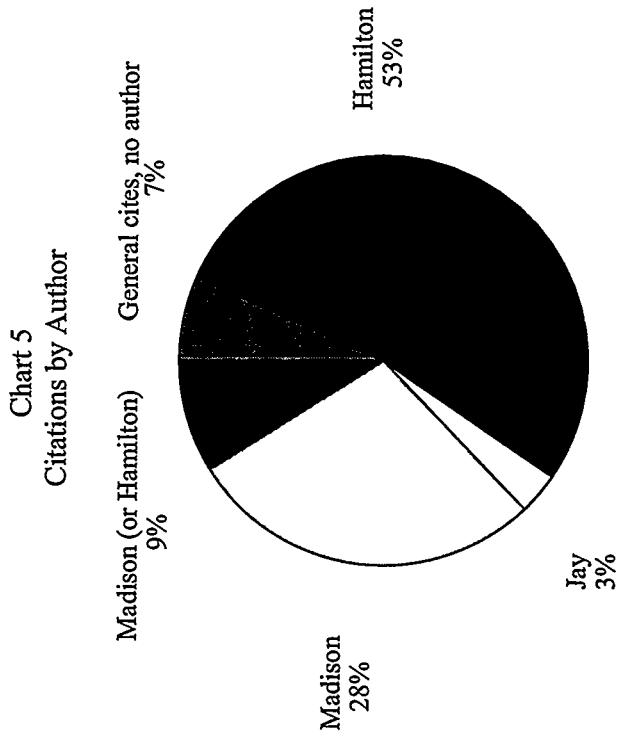
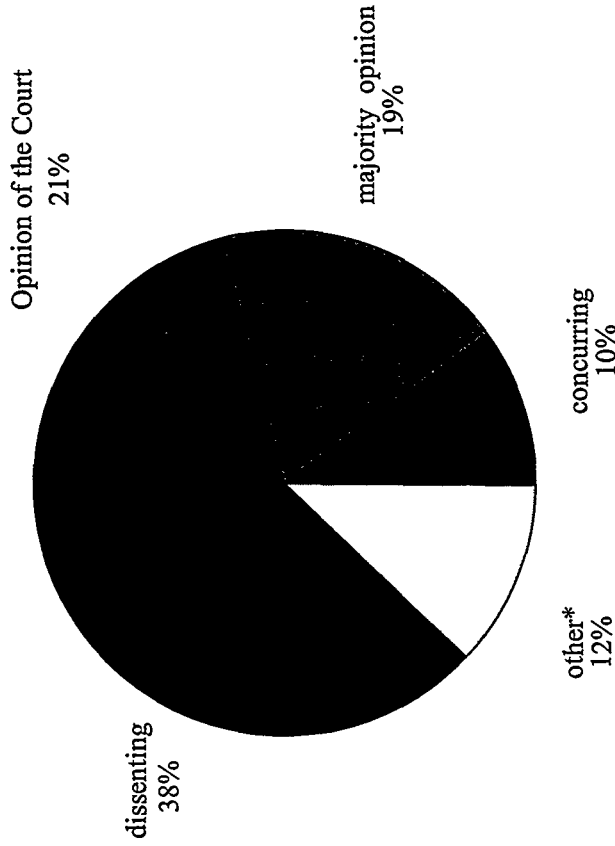


Chart 6
Citations by Opinion Type



*other:	
per curiam	.97%
majority or plurality opinion	.14%
plurality opinion	3.19%
seriatim	.14%
concurring in the judgment	1.80%
concurring in part and concurring in the judgment	1.80%
concurring in part	.42%
concurring in part and dissenting in part	2.08%
dissenting in part	.14%
miscellaneous	1.39%

