

= Hugo Black =

Hugo Lafayette Black (February 27 , 1886 ? September 25 , 1971) was an American politician and jurist . A member of the Democratic Party , Black represented Alabama in the United States Senate from 1927 to 1937 , and served as an Associate Justice of the Supreme Court of the United States from 1937 to 1971 . Black was nominated to the Supreme Court by President Franklin D. Roosevelt and confirmed by the Senate by a vote of 63 to 16 (6 Democratic Senators and 10 Republican Senators voted against him .) He was first of nine Roosevelt nominees to the Court , and he outlasted all except for William O. Douglas . Black is widely regarded as one of the most influential Supreme Court justices in the 20th century .

The fifth longest @-@ serving justice in Supreme Court history , Black is noted for his advocacy of a textualist reading of the United States Constitution and of the position that the liberties guaranteed in the Bill of Rights were imposed on the states (" incorporated ") by the Fourteenth Amendment . During his political career , Black was regarded as a staunch supporter of liberal policies and civil liberties . However , Black consistently opposed the doctrine of substantive due process (the anti @-@ New Deal Supreme Court cited this concept in such a way as to make it impossible for the government to enact legislation that interfered with the freedom of business owners) and believed that there was no basis in the words of the Constitution for a right to privacy , voting against finding one in *Griswold v. Connecticut* . Black endorsed Roosevelt in both the 1932 and 1936 US Presidential elections and was a staunch supporter of the New Deal .

= = Early years = =

Hugo LaFayette Black was the youngest of the eight children of William Lafayette Black and Martha Toland Black . He was born on February 27 , 1886 , in a small wooden farmhouse in Ashland , Alabama , a poor , isolated rural Clay County town in the Appalachian foothills .

Because his brother Orlando had become a medical doctor , Hugo decided at first to follow in his footsteps . At age seventeen , he left school and enrolled at Birmingham Medical School . However , it was Orlando who suggested that Hugo should enroll at the University of Alabama School of Law . After graduating in June 1906 , he moved back to Ashland and established a legal practice . His practice was not successful there , so Black moved to Birmingham in 1907 where he specialized in labor law and personal injury cases .

Consequent to his defense of an African American who was forced into a form of commercial slavery after incarceration , Black was befriended by A. O. Lane , a judge connected with the case . When Lane was elected to the Birmingham City Commission in 1911 , he asked Black to serve as a police court judge , an experience that would be his only judicial experience prior to the Supreme Court . In 1912 , Black resigned that seat in order to return to practicing law full @-@ time . He was not done with public service ; in 1914 , he began a four @-@ year term as the Jefferson County Prosecuting Attorney .

Three years later , during World War I , Black resigned in order to join the United States Army , eventually reaching the rank of captain . He served in the 81st Field Artillery , but was not assigned to Europe . He joined the Birmingham Civitan Club during this time , eventually serving as president of the group . He remained an active member throughout his life , occasionally contributing articles to Civitan publications .

On February 23 , 1921 , he married Josephine Foster (1899 ? 1951) , with whom he would have three children : Hugo L. Black , II (1922 ? 2013) , an attorney ; Sterling Foster (1924 ? 1996) , and Martha Josephine (born 1933) . Josephine died in 1951 ; in 1957 , Black married Elizabeth Seay DeMeritte .

= = Ku Klux Klan and anti @-@ Catholicism = =

In 1921 , Black successfully defended E. R. Stephenson in the sensationalistic trial for the murder of a Catholic priest , Father James E. Coyle . Black joined the Ku Klux Klan shortly after , thinking it

necessary for his political career . Running for the Senate as the " people 's " candidate , Black believed he needed the votes of Klan members . Near the end of his life , Black would admit that joining the Klan was a mistake , but he went on to say " I would have joined any group if it helped get me votes . " Black , along with fellow politician and friend , Bibb Graves , were known in Alabama Klan circles as the Gold Dust Twins .

Biographers in the 1990s examined Black 's views of religious denominations . Ball found regarding the Klan that Black " sympathized with the group 's economic , nativist , and anti @-@ Catholic beliefs . " Newman said Black " disliked the Catholic Church as an institution " and gave numerous anti @-@ Catholic speeches in his 1926 election campaign to Ku Klux Klan meetings across Alabama . However in 1937 The Harvard Crimson reported on Black 's appointment of a Jewish law clerk , noting that he " earlier had appointed Miss Annie Butt , a Catholic , as a secretary , and the Supreme Court had designated Leon Smallwood , a Negro and a Catholic as his messenger . "

= = = Thurgood Marshall and Brown v. Board of Education = = =

Black was one of the Associate Justices who held in Brown v. Board of Education that segregation in public schools is unconstitutional . The plaintiffs were represented by Thurgood Marshall . A decade later , on October 2 , 1967 Marshall became the first African American to be appointed to the Supreme Court , and served with Black on the Court until Black 's retirement on September 17 , 1971 .

= = = United States v. Price = = =

In United States v. Price eighteen Ku Klux Klan members were charged with murder and conspiracy for the deaths of James Chaney , Andrew Goodman and Michael Schwerner , but the charges were dismissed by the trial court . A unanimous Supreme Court , which included Black , reversed the dismissal and ordered the case to proceed to trial . Seven of these men , including fellow Klansmen Samuel Bowers , Cecil Price and Alton Wayne Roberts were found guilty of the crime ; eight of them , including Lawrence A. Rainey , were found not guilty ; and three of them , including Edgar Ray Killen , had their cases end in a mistrial .

= = Senate career = =

In 1926 , Black sought election to the United States Senate from Alabama , following the retirement of Senator Oscar Underwood . Since the Democratic Party dominated Alabama politics at the time , he easily defeated his Republican opponent , E. H. Dryer , winning 80 @. @ 9 % of the vote . He was reelected in 1932 , winning 86 @. @ 3 % of the vote against Republican J. Theodore Johnson .

Senator Black gained a reputation as a tenacious investigator . In 1934 , for example , he chaired the committee that looked into the contracts awarded to air mail carriers under Postmaster General Walter Folger Brown , an inquiry which led to the Air Mail scandal . In order to correct what he termed abuses of " fraud and collusion " resulting from the Air Mail Act of 1930 , he introduced the Black @-@ McKellar Bill , later the Air Mail Act of 1934 . The following year he participated in a Senate committee 's investigation of lobbying practices . He publicly denounced the " highpowered , deceptive , telegram @-@ fixing , letterframing , Washington @-@ visiting " lobbyists , and advocated legislation requiring them to publicly register their names and salaries .

In 1935 , Black became chairman of the Senate Committee on Education and Labor , a position he would hold for the remainder of his Senate career . In 1937 he sponsored the Black @-@ Connery Bill , which sought to establish a national minimum wage and a maximum workweek of thirty hours . Although the bill was initially rejected in the House of Representatives , an amended version of it , which extended Black 's original maximum workweek proposal to forty @-@ four hours , was passed in 1938 (after Black left the Senate) , becoming the Fair Labor Standards Act .

Black was an ardent supporter of President Franklin D. Roosevelt and the New Deal . In particular , he was an outspoken advocate of the Judiciary Reorganization Bill of 1937 , popularly known as the

court @-@ packing bill , FDR 's unsuccessful plan to expand the number of seats on the Supreme Court in his favor .

Black would throughout his career as a senator give speeches based on his belief in the ultimate power of the Constitution . He came to see the actions of the anti @-@ New Deal Supreme Court as judicial excess ; in his view , the Court was improperly overturning legislation passed by large majorities of Congress .

During his Senate career Black consistently opposed the passage of Anti @-@ Lynching legislation . In 1935 Black lead a filibuster of the Wagner @-@ Costigan anti @-@ lynching bill . The Pittsburgh Post Gazette reported that when a motion to end the filibuster was defeated " [t] he southerners ? headed by Tom Connally of Texas and Hugo Black of Alabama ? grinned at each other and shook hands . "

= = Appointment to the Supreme Court = =

Soon after the failure of the court @-@ packing plan , President Roosevelt obtained his first opportunity to appoint a Supreme Court Justice when conservative Willis Van Devanter retired . Roosevelt wanted the replacement to be a " thumping , evangelical New Dealer " who was reasonably young , confirmable by the Senate , and from a region of the country unrepresented on the Court . The three final candidates were Solicitor General Stanley Reed , Sherman Minton , and Hugo Black . Roosevelt said Reed " had no fire , " and Minton did not want the appointment at the time . The position would go to Black , a candidate from the South , who , as a senator , had voted for all 24 of Roosevelt 's major New Deal programs . Roosevelt admired Black 's use of the investigative role of the Senate to shape the American mind on reforms , his strong voting record , and his early support , which dated back to 1933 . Both Reed and Minton were later appointed to the Supreme Court ; Reed was the next Justice appointed by Roosevelt , while Minton was appointed by Harry Truman in 1949 .

On August 12 , 1937 , Roosevelt nominated Black to fill the vacancy . By tradition , a senator nominated for an executive or judicial office was confirmed immediately and without debate . However , when Black was nominated , the Senate departed from this tradition for the first time since 1853 ; instead of confirming him immediately , it referred the nomination to the Judiciary Committee . Black was criticized for his presumed bigotry , his cultural roots , and his Klan membership , when that became public .

The Judiciary Committee recommended Black 's confirmation by a vote of 13 ? 4 on August 16 of that year .

The next day the full Senate considered Black 's nomination . Rumors relating to Black 's involvement in the Ku Klux Klan surfaced among the senators , and two Democratic senators tried defeating the nomination . However , no conclusive evidence of Black 's involvement was available at the time , so after six hours of debate , the Senate voted 63 ? 16 to confirm Black . Ten Republicans and six Democrats voted against Black . Alabama Governor Bibb Graves appointed his own wife , Dixie B. Graves , to fill Black 's vacated seat .

The next month , the Pittsburgh Post @-@ Gazette investigated Black 's past . Ray Sprigle won a Pulitzer Prize for his series of articles revealing Black 's involvement in the Klan . However , the controversy soon subsided ; the criticism was highly partisan , and polls showed that the attacks had little effect on public opinion of Black . Black also addressed public concerns in person : " I did join the Klan . I later resigned . I never rejoined Before becoming a Senator I dropped the Klan . I have had nothing to do with it since that time . I abandoned it . I completely discontinued any association with the organization . I have never resumed it and never expect to do so . "

Black was close friends with Walter Francis White , the black executive secretary of the NAACP who would help assuage critics of the appointment . Chambers v. Florida (1940) , an early case where Black ruled in favor of African American criminal defendants who experienced due process violations , helped put concerns to rest .

= = Supreme Court career = =

As soon as Black started on the Court , he advocated judicial restraint and worked to move the Court away from interposing itself in social and economic matters . Black vigorously defended the " plain meaning " of the Constitution , rooted in the ideas of its era , and emphasized the supremacy of the legislature ; for Black , the role of the Supreme Court was limited and constitutionally prescribed .

During his early years on the Supreme Court , Black helped reverse several earlier court decisions taking a narrow interpretation of federal power . Many New Deal laws that would have been struck down under earlier precedents were thus upheld . In 1939 Black was joined on the Supreme Court by Felix Frankfurter and William O. Douglas . Douglas voted alongside Black in several cases , especially those involving the First Amendment , while Frankfurter soon became one of Black 's ideological foes . From 1946 until 1971 , Black was the Senior Associate Justice of the Supreme Court .

= = Relationship with other justices = =

In the mid @-@ 1940s , Justice Black became involved in a bitter dispute with Justice Robert H. Jackson as a result of *Jewell Ridge Coal Corp. v. Local 6167 , United Mine Workers* (1945) . In this case the Court ruled 5 ? 4 in favor of the UMW ; Black voted with the majority , while Jackson dissented . However , the coal company requested the Court rehear the case on the grounds that Justice Black should have recused himself , as the mine workers were represented by Black 's law partner of 20 years earlier . Under the Supreme Court 's rules , each Justice was entitled to determine the propriety of disqualifying himself . Jackson agreed that the petition for rehearing should be denied , but refused to give approval to Black 's participation in the case . Ultimately , when the Court unanimously denied the petition for rehearing , Justice Jackson released a short statement , in which Justice Frankfurter joined . The concurrence indicated that Jackson voted to deny the petition not because he approved of Black 's participation in the case , but on the " limited grounds " that each Justice was entitled to determine for himself the propriety of recusal . At first the case attracted little public comment , however , after Chief Justice Harlan Stone died in 1946 , rumors that President Harry S. Truman would appoint Jackson as Stone 's successor led several newspapers to investigate and report the Jewell Ridge controversy . Black and Douglas allegedly leaked to newspapers that they would resign if Jackson were appointed Chief . Truman ultimately chose Fred M. Vinson for the position .

In 1948 , Justice Black approved an order solicited by Abe Fortas that barred a federal district court in Texas from further investigation of significant voter fraud and irregularities in the 1948 Democratic primary election for United States Senator from Texas . The order effectively confirmed future President Lyndon Johnson 's apparent victory over former Texas Governor Coke Stevenson .

Black later clashed with fellow Justice Abe Fortas during the 1960s . In 1968 , a Warren clerk called their feud " one of the most basic animosities of the Court . "

= = 1950s and beyond = =

Vinson 's tenure as Chief Justice coincided with the Red Scare , a period of intense anti @-@ communism in the United States . In several cases the Supreme Court considered , and upheld , the validity of anticommunist laws passed during this era . For example , in *American Communications Association v. Douds* (1950) , the Court upheld a law that required labor union officials to forswear membership in the Communist Party . Black dissented , claiming that the law violated the First Amendment 's free speech clause . Similarly , in *Dennis v. United States* , 341 U.S. 494 (1951) , the Court upheld the Smith Act , which made it a crime to " advocate , abet , advise , or teach the duty , necessity , desirability , or propriety of overthrowing the Government of the United States . " The law was often used to prosecute individuals for joining the Communist Party . Black again dissented , writing :

" Public opinion being what it now is , few will protest the conviction of these Communist petitioners

. There is hope , however , that , in calmer times , when present pressures , passions and fears subside , this or some later Court will restore the First Amendment liberties to the high preferred place where they belong in a free society . "

Beginning in the late 1940s , Black wrote decisions relating to the establishment clause , where he insisted on the strict separation of church and state . The most notable of these was *Engel v. Vitale* (1962) , which declared state @-@ sanctioned prayer in public schools unconstitutional . This provoked considerable opposition , especially in conservative circles . Efforts to restore school prayer by constitutional amendment failed .

In 1953 Vinson died and was replaced by Earl Warren . While all members of the Court were New Deal liberals , Black was part of the most liberal wing of the Court , together with Warren , Douglas , William Brennan , and Arthur Goldberg . They said the Court had a role beyond that of Congress . Yet while he often voted with them on the Warren Court , he occasionally took his own line on some key cases , most notably *Griswold v. Connecticut* (1965) , which established that the Constitution protected a right to privacy . In not finding such a right implicit in the Constitution , Black wrote in his dissent that " Many good and able men have eloquently spoken and written ... about the duty of this Court to keep the Constitution in tune with the times For myself , I must with all deference reject that philosophy . "

Black 's most prominent ideological opponent on the Warren Court was John Marshall Harlan II , who replaced Justice Jackson in 1955 . They disagreed on several issues , including the applicability of the Bill of Rights to the states , the scope of the due process clause , and the one man , one vote principle .

= = Jurisprudence = =

Black 's jurisprudence is among the most distinctive of any members of the Supreme Court in history and has been influential on justices as diverse as Earl Warren , William Rehnquist , and Antonin Scalia .

Black 's jurisprudence had three essential components : history , literalism , and absolutism . Black 's love of history was rooted in a lifelong love of books , which led him to the belief that historical study was necessary for one to prevent repeating society 's past mistakes . Black wrote in 1968 that " power corrupts , and unrestricted power will tempt Supreme Court justices just as history tells us it has tempted other judges . "

Second , Black 's commitment to literalism involved using the words of the Constitution to restrict the roles of the judiciary ? Black would have justices validate the supremacy of the country 's legislature , unless the legislature itself was denying people their freedoms . Black wrote : " The Constitution is not deathless ; it provides for changing or repealing by the amending process , not by judges but by the people and their chosen representatives . " Black would often lecture his colleagues , liberal or conservative , on the Supreme Court about the importance of acting within the limits of the Constitution .

Third , Black 's absolutism led him to enforce the rights of the Constitution , rather than attempting to define a meaning , scope , or extent to each right . Black expressed his view on the Bill of Rights in his opinion in the 1947 case , *Adamson v. California* , which he saw as his " most significant opinion written : "

" I cannot consider the Bill of Rights to be an outworn 18th century ' strait jacket . ' ... Its provisions may be thought outdated abstractions by some . And it is true that they were designed to meet ancient evils . But they are the same kind of human evils that have emerged from century to century wherever excessive power is sought by the few at the expense of the many . In my judgment the people of no nation can lose their liberty so long as a Bill of Rights like ours survives and its basic purposes are conscientiously interpreted , enforced , and respected ... I would follow what I believe was the original intention of the Fourteenth Amendment ? to extend to all the people the complete protection of the Bill of Rights . To hold that this Court can determine what , if any , provisions of the Bill of Rights will be enforced , and if so to what degree , is to frustrate the great design of a written Constitution .

= = = Judicial restraint = = =

Black intensely believed in judicial restraint and reserved the power of making laws to the legislatures , often scolding his more liberal colleagues for what he saw as judicially created legislation . Conservative justice John M. Harlan II would say of Black : " No Justice has worn his judicial robes with a keener sense of the limitations that go with them . " Black advocated a narrow role of interpretation for justices , opposing a view of justices as social engineers or rewriters of the Constitution . Black opposed enlarging constitutional liberties beyond their literal or historic " plain " meaning , as he saw his more liberal colleagues do . However , he also condemned the actions of those to his right , such as the conservative Four Horsemen of the 1920s and 1930s , who struck down much of the New Deal 's legislation .

Black forged the 5 ? 2 majority in the 1967 decision *Fortson v. Morris* , which cleared the path for the Georgia State Legislature to choose the governor in the deadlocked 1966 race between Democrat Lester Maddox and Republican Howard Callaway . Whereas Black voted with the majority under strict construction to uphold the state constitutional provision , his colleagues Douglas and Abe Fortas dissented . According to Douglas , Georgia tradition would guarantee a Maddox victory though he had trailed Callaway by some three thousand votes in the general election returns . Douglas also saw the issue as a continuation of the earlier decision *Gray v. Sanders* , which had struck down Georgia 's County Unit System , a kind of electoral college formerly used to choose the governor . Black argued that the U.S. Constitution does not dictate how a state must choose its governor . " Our business is not to write laws to fit the day . Our task is to interpret the Constitution , " Black explained .

= = = Textualism and originalism = = =

Black was noted for his advocacy of a textualist approach to constitutional interpretation . He took a " literal " or absolutist reading of the provisions of the Bill of Rights and believed that the text of the Constitution is absolutely determinative on any question calling for judicial interpretation , leading to his reputation as a " textualist " and as a " strict constructionist " . While the text of the constitution was an absolute limitation on the authority of judges in constitutional matters , within the confines of the text judges had a broad and unqualified mandate to enforce constitutional provisions , regardless of current public sentiment , or the feelings of the justices themselves .

Thus , Black refused to join in the efforts of the justices on the Court who sought to abolish capital punishment in the United States , whose efforts succeeded (temporarily) in the term immediately following Black 's death . He claimed that the Fifth and Fourteenth Amendment 's reference to takings of " life " , and to " capital " crimes , meant approval of the death penalty was implicit in the Bill of Rights . He also was not persuaded that a right of privacy was implicit in the Ninth or Fourteenth amendments , and dissented from the Court 's 1965 *Griswold* decision which invalidated a conviction for the use of contraceptives . Black said " It belittles that [Fourth] Amendment to talk about it as though it protects nothing but ' privacy ' ... ' privacy ' is a broad , abstract , and ambiguous concept ... The constitutional right of privacy is not found in the Constitution . "

Justice Black rejected reliance on what he called the " mysterious and uncertain " concept of natural law . According to Black that theory was vague and arbitrary , and merely allowed judges to impose their personal views on the nation . Instead , he argued that courts should limit themselves to a strict analysis of the actual text of the Constitution . Black was , in addition , an opponent of the " living constitution " theory . In his dissent to *Griswold* (1965) , he wrote :

I realize that many good and able men have eloquently spoken and written , sometimes in rhapsodical strains , about the duty of this Court to keep the Constitution in tune with the times . The idea is that the Constitution must be changed from time to time , and that this Court is charged with a duty to make those changes . For myself , I must , with all deference , reject that philosophy . The Constitution makers knew the need for change , and provided for it . Amendments suggested by the people 's elected representatives can be submitted to the people or their selected agents for

ratification . That method of change was good for our Fathers , and , being somewhat old @-@ fashioned , I must add it is good enough for me .

Thus , some have seen Black as an originalist . David Strauss , for example , hails him as " [t] he most influential originalist judge of the last hundred years . " Black insisted that judges rely on the intent of the Framers as well as the " plain meaning " of the Constitution 's words and phrases (drawing on the history of the period) when deciding a case .

Black additionally called for judicial restraint not usually seen in Court decision @-@ making . The justices of the Court would validate the supremacy of the legislature in public policy @-@ making , unless the legislature was denying people constitutional freedoms . Black stated that the legislature " was fully clothed with the power to govern and to maintain order . "

= = = Federalism = = =

Black held an expansive view of legislative power , whether that be state or federal , and would often vote against judicial review of state laws that could be struck down under the Commerce Clause . Previously , during the 1920s and 1930s , the Court had interpreted the commerce clause narrowly , often striking down laws on the grounds that Congress had overstepped its authority . After 1937 , however , the Supreme Court overturned several precedents and affirmed a broader interpretation of the commerce clause . Black consistently voted with the majority in these decisions ; for example , he joined *Mulford v. Smith* , 307 U.S. 38 (1939) , *United States v. Darby Lumber Co .* , 312 U.S. 100 (1941) , *Wickard v. Filburn* , 317 U.S. 111 (1942) , *Heart of Atlanta Motel v. United States* , 379 U.S. 241 (1964) , and *Katzenbach v. McClung* , 379 U.S. 294 (1964) .

In several other federalism cases , however , Black ruled against the federal government . For instance , he partially dissented from *South Carolina v. Katzenbach* , 383 U.S. 301 (1966) , in which the Court upheld the validity of the Voting Rights Act of 1965 . In an attempt to protect the voting rights of African Americans , the act required any state whose population was at least 5 % African American to obtain federal approval before changing its voting laws . Black wrote that the law ,

... by providing that some of the States cannot pass state laws or adopt state constitutional amendments without first being compelled to beg federal authorities to approve their policies , so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between state and federal power almost meaningless .

Similarly , in *Oregon v. Mitchell* (1970) , he delivered the opinion of the court holding that the federal government was not entitled to set the voting age for state elections .

In the law of federal jurisdiction , Black made a large contribution by authoring the majority opinion in *Younger v. Harris* . This case , decided during Black 's last year on the Court , has given rise to what is now known as *Younger abstention* . According to this doctrine , an important principle of federalism called " comity " ? that is , respect by federal courts for state courts ? dictates that federal courts abstain from intervening in ongoing state proceedings , absent the most compelling circumstances . The case is also famous for its discussion of what Black calls " Our Federalism , " a discussion in which Black expatiates on

proper respect for state functions , a recognition of the fact that the entire country is made up of a Union of separate state governments , and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways .

Black was an early supporter of the " one man , one vote " standard for apportionment set by *Baker v. Carr* . He dissented in support of this view in Baker 's predecessor case , *Colegrove v. Green* .

= = = Civil rights = = =

As a senator , Black filibustered an anti @-@ lynching bill . However , during his tenure on the bench , Black established a record more sympathetic to the civil rights movement . He joined the majority in *Shelley v. Kraemer* (1948) , which invalidated the judicial enforcement of racially

restrictive covenants . Similarly , he was part of the unanimous *Brown v. Board of Education* (1954) Court that struck down racial segregation in public schools . Black remained determined to desegregate the South and would call for the Supreme Court to adopt a position of " immediate desegregation " in 1969 's *Alexander v. Holmes County Board of Education* .

Black wrote the court 's majority opinion in *Korematsu v. United States* , which validated Roosevelt 's decision to intern Japanese Americans on the West Coast during World War II . The decision is an example of Black 's belief in the limited role of the judiciary ; he validated the legislative and executive actions that led to internment , saying " it is unnecessary for us to appraise the possible reasons which might have prompted the order to be used in the form it was . "

Black also tended to favor law and order over civil rights activism . This led him to read the Civil Rights Act narrowly . For example , he dissented in a case reversing convictions of sit @-@ in protesters , arguing to limit the scope of the Civil Rights Act . In 1968 he said , " Unfortunately there are some who think that Negroes should have special privileges under the law . " Black felt that actions like protesting , singing , or marching for " good causes " one day could lead to supporting evil causes later on ; his sister @-@ in @-@ law explained that Black was " mortally afraid " of protesters . Black opposed the actions of some civil rights and Vietnam War protesters and believed that legislatures first , and courts second , should be responsible for alleviating social wrongs . Black once said he was " vigorously opposed to efforts to extend the First Amendment 's freedom of speech beyond speech , " to conduct .

= = = First Amendment = = =

Black took an absolutist approach to First Amendment jurisprudence , believing the first words of the Amendment that said " Congress shall make no law ... " Black rejected the creation of judicial tests for free speech standards , such as the tests for " clear and present danger " , " bad tendency " , " gravity of the evil " , " reasonableness " , or " balancing . " Black would write that the First Amendment is " wholly ' beyond the reach ' of federal power to abridge ... I do not believe that any federal agencies , including Congress and the Court , have power or authority to subordinate speech and press to what they think are ' more important interests . ' "

He believed that the First Amendment erected a metaphorical wall of separation between church and state . During his career Black wrote several important opinions relating to church @-@ state separation . He delivered the opinion of the court in *Everson v. Board of Education* (1947) , which held that the establishment clause was applicable not only to the federal government , but also to the states .

Black 's majority opinion in *McCormack v. Board of Education* (1948) held that the government could not provide religious instruction in public schools . In *Torcaso v. Watkins* (1961) , he delivered an opinion which affirmed that the states could not use religious tests as qualifications for public office . Similarly , he authored the majority opinion in *Engel v. Vitale* (1962) , which declared it unconstitutional for states to require the recitation of official prayers in public schools .

Justice Black is often regarded as a leading defender of First Amendment rights such as the freedom of speech and of the press . He refused to accept the doctrine that the freedom of speech could be curtailed on national security grounds . Thus , in *New York Times Co. v. United States* (1971) , he voted to allow newspapers to publish the Pentagon Papers despite the Nixon Administration 's contention that publication would have security implications . In his concurring opinion , Black stated ,

In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy . The press was to serve the governed , not the governors . The Government 's power to censor the press was abolished so that the press would remain forever free to censure the Government . The press was protected so that it could bare the secrets of government and inform the people . Only a free and unrestrained press can effectively expose deception in government . [...] The word ' security ' is a broad , vague generality whose contours should not be invoked to abrogate the fundamental law embodied in the First Amendment .

He rejected the idea that the government was entitled to punish " obscene " speech . Likewise , he

argued that defamation laws abridged the freedom of speech and were therefore unconstitutional . Most members of the Supreme Court rejected both of these views ; Black 's interpretation did attract the support of Justice Douglas .

However , he did not believe that individuals had the right to speak wherever they pleased . He delivered the majority opinion in *Adderley v. Florida* (1966) , controversially upholding a trespassing conviction for protesters who demonstrated on government property . He also dissented from *Tinker v. Des Moines* (1969) , in which the Supreme Court ruled that students had the right to wear armbands (as a form of protest) in schools , writing ,

While I have always believed that under the First and Fourteenth Amendments neither the State nor the Federal Government has any authority to regulate or censor the content of speech , I have never believed that any person has a right to give speeches or engage in demonstrations where he pleases and when he pleases .

Moreover , Black took a narrow view of what constituted " speech " under the First Amendment ; for him , " conduct " did not deserve the same protections that " speech " did . For example , he did not believe that flag burning was speech ; in *Street v. New York* (1969) , he wrote : " It passes my belief that anything in the Federal Constitution bars a State from making the deliberate burning of the American flag an offense . " Similarly , he dissented from *Cohen v. California* (1971) , in which the Court held that wearing a jacket emblazoned with the words " Fuck the Draft " was speech protected by the First Amendment . He asserted that this activity " was mainly conduct , and little speech . "

As a Justice , Black held the view that the Court should literally enforce constitutional guarantees , especially the First Amendment free speech clause . He was often labeled an ? activist ? because of his willingness to review legislation that arguably violated constitutional provisions . Black maintained that literalism was necessary to cabin judicial power .

For these reasons , he was one of the dissenting votes in the case of George Anastaplo who was prohibited from the Illinois Bar because he refused to denounce communists and refused to give a testimony of his political ideology . Black is quoted as stating :

Anastaplo has not indicated , even remotely , a belief that this country is an oppressive one in which the ' right of revolution ' should be exercised . Quite the contrary , the entire course of his life , as disclosed by the record , has been one of devotion and service to his country ? first , in his willingness to defend its security at the risk of his own life in time of war and , later , in his willingness to defend its freedoms at the risk of his professional career in time of peace .

In a 1968 public interview , reflecting on his most important contributions , Black put his dissent from *Adamson v. California* " at the top of the list , but then spoke with great eloquence from one of his earliest opinions in *Chambers v. Florida* (1940) . "

= = = Criminal procedure = = =

Black adopted a narrower interpretation of the Fourth Amendment than many of his colleagues on the Warren Court . He dissented from *Katz v. United States* (1967) , in which the Court held that warrantless wiretapping violated the Fourth Amendment 's guarantee against unreasonable search and seizure . He argued that the Fourth Amendment only protected tangible items from physical searches or seizures . Thus , he concluded that telephone conversations were not within the scope of the amendment , and that warrantless wiretapping was consequently permissible .

Justice Black originally believed that the Constitution did not require the exclusion of illegally seized evidence at trials . In his concurrence to *Wolf v. Colorado* (1949) , he claimed that the exclusionary rule was " not a command of the Fourth Amendment but ... a judicially created rule of evidence . " But he later changed his mind and joined the majority in *Mapp v. Ohio* (1961) , which applied it to state as well as federal criminal investigations . In his concurrence , he indicated that his support was based on the Fifth Amendment 's guarantee of the right against self @-@ incrimination , not on the Fourth Amendment 's guarantee against unreasonable searches and seizures . He wrote , " I am still not persuaded that the Fourth Amendment , standing alone , would be enough to bar the introduction into evidence ... seized ... in violation of its commands . "

In other instances Black took a fairly broad view of the rights of criminal defendants . He joined the Supreme Court 's landmark decision in *Miranda v. Arizona* (1966) , which required law enforcement officers to warn suspects of their rights prior to interrogations , and consistently voted to apply the guarantees of the Fourth , Fifth , Sixth , and Eighth Amendments at the state level .

Black was the author of the landmark decision in *Gideon v. Wainwright* (1963) , which ruled that the states must provide an attorney to an indigent criminal defendant who cannot afford one . Before *Gideon* , the Court had held that such a requirement applied only to the federal government .

= = = Bill of Rights applicable to states , or " incorporation " question = = =

One of the most notable aspects of Justice Black 's jurisprudence was the view that the entirety of the federal Bill of Rights was applicable to the states . Originally , the Bill of Rights was binding only upon the federal government , as the Supreme Court ruled in *Barron v. Baltimore* (1833) . According to Black , the Fourteenth Amendment , ratified in 1868 , " incorporated " the Bill of Rights , or made it binding upon the states as well . In particular , he pointed to the Privileges or Immunities Clause , " No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . " He proposed that the term " privileges or immunities " encompassed the rights mentioned in the first eight amendments to the Constitution .

Black first expounded this theory of incorporation when the Supreme Court ruled in *Adamson v. California* (1947) that the Fifth Amendment 's guarantee against self @-@ incrimination did not apply to the states . It was during this period of time that Hugo Black became a disciple of John Lilburne and his claim of ? freeborn rights ? . In an appendix to his dissenting opinion , Justice Black analyzed statements made by those who framed the Fourteenth Amendment , reaching the conclusion that " the Fourteenth Amendment , and particularly its privileges and immunities clause , was a plain application of the Bill of Rights to the states . "

Black 's theory attracted the support of Justices such as Frank Murphy and William O. Douglas . However , it never achieved the support of a majority of the Court . The most prominent opponents of Black 's theory were Justices Felix Frankfurter and John Marshall Harlan II . Frankfurter and Harlan argued that the Fourteenth Amendment did not incorporate the Bill of Rights per se , but merely protected rights that are " implicit in the concept of ordered liberty , " which was the standard Justice Cardozo had established earlier in *Palko v. Connecticut* .

The Supreme Court never accepted the argument that the Fourteenth Amendment incorporated the entirety of the Bill of Rights . However , it did agree that some " fundamental " guarantees were made applicable to the states . For the most part , during the 1930s , 1940s , and 1950s , only First Amendment rights (such as free exercise of religion and freedom of speech) were deemed sufficiently fundamental by the Supreme Court to be incorporated .

However , during the 1960s , the Court under Chief Justice Warren took the process much further , making almost all guarantees of the Bill of Rights binding upon the states . Thus , although the Court failed to accept Black 's theory of total incorporation , the end result of its jurisprudence is very close to what Black advocated . Today , the only parts of the first eight amendments that have not been extended to the states are the Third and Seventh Amendments , the grand jury clause of the Fifth Amendment , the Eighth Amendment 's protection against excessive bail , and the guarantee of the Sixth Amendment , as interpreted , that criminal juries be composed of 12 members and be unanimous in their verdicts .

= = = Due process clause = = =

Justice Black was well known for his rejection of the doctrine of substantive due process . Most Supreme Court Justices accepted the view that the due process clause encompassed not only procedural guarantees , but also " fundamental fairness " and fundamental rights . Thus , it was argued that due process included a " substantive " component in addition to its " procedural " component .

Black , however , believed that this interpretation of the due process clause was unjustifiably broad

. In his dissent to *Griswold* , he charged that the doctrine of substantive due process " takes away from Congress and States the power to make laws based on their own judgment of fairness and wisdom , and transfers that power to this Court for ultimate determination . " Instead , Black advocated a much narrower interpretation of the clause . In his dissent to *In re Winship* , he analyzed the history of the term " due process of law " , and concluded : " For me , the only correct meaning of that phrase is that our Government must proceed according to the ' law of the land ' ? that is , according to written constitutional and statutory provisions as interpreted by court decisions . "

Black 's view on due process drew from his reading of British history ; to him , due process meant all persons were to be tried in accordance with the Bill of Rights ' procedural guarantees and in accordance with constitutionally pursuant laws . Black advocated equal treatment by the government for all persons , regardless of wealth , age , or race . Black 's view of due process was restrictive in the sense that it was premised on equal procedures ; it did not extend to substantive due process . This was in accordance with Black 's literalist views . Black did not tie procedural due process exclusively to the Bill of Rights , but he did tie it exclusively to the Bill of Rights combined with other explicit provisions of the Constitution .

None of Black 's colleagues shared his interpretation of the due process clause . His chief rival on the issue (and on many other issues) was Felix Frankfurter , who advocated a substantive view of due process based on " natural law " ? if a challenged action did not " shock the conscience " of the jurist , or violate British concepts of fairness , Frankfurter would find no violation of due process of law . John M. Harlan II largely agreed with Frankfurter , and was highly critical of Black 's view , indicating his " continued bafflement at ... Black 's insistence that due process ... does not embody a concept of fundamental fairness " in his *Winship* concurrence .

= = = Voting rights = = =

Black was one of the Supreme Court 's foremost defenders of the " one man , one vote " principle . He delivered the opinion of the court in *Wesberry v. Sanders* (1964) , holding that the Constitution required congressional districts in any state to be approximately equal in population . He concluded that the Constitution 's command " that Representatives be chosen " by the People of the several States ' means that as nearly as is practicable one man 's vote in a congressional election is to be worth as much as another 's . " Likewise , he voted in favor of *Reynolds v. Sims* (1964) , which extended the same requirement to state legislative districts on the basis of the equal protection clause .

At the same time , Black did not believe that the equal protection clause made poll taxes unconstitutional . Thus , he dissented from the Court 's ruling in *Harper v. Virginia Board of Elections* (1966) invalidating the use of the poll tax as a qualification to vote . He criticized the Court for exceeding its " limited power to interpret the original meaning of the Equal Protection Clause " and for " giving that clause a new meaning which it believes represents a better governmental policy . "

= = = Equal Protection Clause = = =

By the late 1940s , Black believed that the Fourteenth Amendment 's due process clause was a constitutional prohibition against any state governmental actions that discriminated on the basis of race in an invidious or capricious manner . Black saw only race and the characteristics of alienage as the " suspect " categories that were addressed and protected by equal protection . Black believed that the equal protection clause could not be introduced as a means to invalidate state action , unless that action involved civil rights or racial discrimination . Black would maintain this view to his death , saying that race discrimination litigation merited strict scrutiny , whereas all other state @-@ action litigation did not . Black reserved the power to change the meaning and the scope of due process to the legislature .

= = Retirement and death = =

Justice Black admitted himself to the National Naval Medical Center in Bethesda , Maryland , in August 1971 , and subsequently retired from the Court on September 17 . He suffered a stroke two days later and died on September 25 .

Services were held at the National Cathedral , and over 1 @, @ 000 persons attended . Pursuant to Justice Black ' s wishes , the coffin was ? simple and cheap ? and was displayed at the service to show that the costs of burial are not reflective of the worth of the human whose remains were present .

His remains were interred at the Arlington National Cemetery . He is one of twelve Supreme Court justices buried at Arlington . The others are Harry Andrew Blackmun , William J. Brennan , Arthur Joseph Goldberg , Thurgood Marshall , Potter Stewart , William O. Douglas , Oliver Wendell Holmes , Jr . , Chief Justice William Howard Taft , Chief Justice Earl Warren , Chief Justice Warren Burger , and Chief Justice William Rehnquist . Justice Black is buried to the right of the main cemetery entrance , and up a hill , 200 yards behind the Taft monument . Black 's headstone is " identical in size and shape to the tens of thousands of military headstones in Arlington . " It says simply , " Hugo Lafayette Black , Captain , U. S. Army " .

President Richard Nixon first considered nominating Hershel Friday to fill the vacant seat , but changed his mind after the American Bar Association found Friday unqualified . Nixon then nominated Lewis Powell , who was confirmed by the Senate .

= = Legacy = =

Hugo Black was twice the subject of covers of Time Magazine : On August 26 , 1935 as a United States Senator ; and on October 9 , 1964 as an Associate Justice (art by Robert Vickrey) .

In 1986 , Black appeared on the Great Americans series postage stamp issued by the United States Postal Service . Along with Oliver Wendell Holmes , Jr. he was one of only two Associate Justices to do so until the later inclusions of Thurgood Marshall , Joseph Story , Louis Brandeis , Felix Frankfurter , and William J. Brennan , Jr . See , Justice Hugo L. Black 5 ¢ stamp. and Hugo L. Black , First Day Cover . In 1987 , Congress passed a law sponsored by Ben Erdreich , H.R. 614 , designating the new courthouse building for the U.S. District Court for the Northern District of Alabama in Birmingham , as the " Hugo L. Black United States Courthouse . "

An extensive collection of Black 's personal , senatorial , and judicial papers is archived at the Manuscript Division of the Library of Congress , where it is open for research .

Justice Black is honored in an exhibit in the Bounds Law Library at the University of Alabama School of Law . A special Hugo Black collection is maintained by the library .

Black served on the Supreme Court for thirty @-@ four years , making him the fifth longest @-@ serving Justice in Supreme Court history . He was the senior (longest serving) justice on the court for an unprecedented twenty @-@ five years , from the death of Chief Justice Stone on April 22 , 1946 to his own retirement on September 17 , 1971 . As the longest @-@ serving associate justice , he was acting Chief Justice on two occasions : from Stone 's death until Vinson took office on June 24 , 1946 ; and from Vinson 's death on September 8 , 1953 until Warren took office on October 5 , 1953 . There was no interregnum between the Warren and Burger courts in 1969 .