

Chapter 2

THE JUSTICES

THE THREE-MAN COURT

Under provisions of the third section of the article on the judiciary, the first Legislature elected Serranus C. Hastings, Henry A. Lyons, and Nathaniel Bennett the first three justices of the Supreme Court by a joint vote of both houses.¹ They were sworn into office in January 1850, and on February 1 the Legislature classified them so that Hastings was to serve two years and become chief justice, while Lyons and Bennett, as associate justices, were to have four- and six-year terms, respectively.² In March 1851 the Legislature provided for the election of future justices by having one justice elected that year and one at the general election every second year thereafter. The same section also stated that after the first election of a justice, the senior justice in point of service would become the chief justice.³ The next section provided for the filling of a vacancy on the Court



SERRANUS C.
HASTINGS

¹ California. Legislature, Senate and Assembly. Journals (1849–50), 53–54.

² Cal. Stats. (1850), 462.

³ Cal. Stats. (1851), chap. 1, § 3.



HENRY A.
LYONS



NATHANIEL
BENNETT

by gubernatorial appointment, such appointment lasting until the election and qualification of a successor elected at the first general election after the vacancy occurred.⁴

The office of Supreme Court justice drew the attention of men with quite diverse backgrounds and interests. In the earliest years of statehood many of the justices, together with many of the leaders in the other two branches of the state government, were men who had held high positions in other states before coming to California.⁵ Serranus C. Hastings, California's first chief justice, had already been a member of Congress from Iowa and chief justice of that state's supreme court. He arrived in California in 1849 at the age of thirty-five, and went into the practice of law in Sacramento. In the two years he served on the Court, he wrote thirty-five opinions for the majority, but his most notable opinion (discussed below) was his dissent in *Woodworth v. Fulton*, which was later to become law.⁶ After leaving the Court, Hastings served as attorney general for a term, and he later founded the

Hastings College of the Law as a part of the University of California.

When Hastings' term expired, Henry A. Lyons, who had been elected to the four-year term, acceded to the position of chief justice, but resigned after three months. "About the only distinguishing feature relating to Henry A. Lyons' legal career in California is the fact that he was one of the first three men to come to its Supreme Court. His work on the Court was of a role so minor as to justify little notice."⁷ Lyons wrote only about a dozen opinions, and does not appear to have made any lasting contribution.

The third of the initial justices, Nathaniel Bennett, was the strongest and the most productive member of the first Court. Bennett, who had

⁴ *Ibid.*, § 4.

⁵ Richard Dale Batman, "The California Political Frontier: Democratic or Bureaucratic?" *Journal of the West* VII (October, 1968): 461-70.

⁶ *Woodworth v. Fulton* (1850), 1 Cal. 295.

⁷ J. Edward Johnson, *History of the Supreme Court Justices of California*, vol. 1 (2 vols., vol. 1 San Francisco: Bender-Moss Company, 1963; vol. 2 San Francisco: Bancroft-Whitney Company, 1966), 31. The biographical data used in this chapter is derived from this work.

been chairman of the State Senate Judiciary Committee, wrote more than twice the number of opinions than did Hastings and Lyons together. Even though he drew the longest term, he was the first to resign, leaving the Court in October 1851 to become the court reporter, in which capacity he became responsible for the publication of the first volume of the *Supreme Court Reports*.

To fill the vacancy created by Bennett's resignation, Governor John McDougal appointed Hugh C. Murray to the Court. Murray was only twenty-six at the time, and when Henry A. Lyons resigned the next year, Murray, by now the senior justice, became chief justice, the youngest ever to hold this position in California. Murray was elected to succeed himself in 1852 (to fill the rest of Bennett's term, originally to terminate at the close of 1855), and for a full term in 1855. Murray did not care for change in the law as he had learned it in Illinois; he was also a follower of John C. Calhoun's theories as to states' rights. He died in 1857 at the age of thirty-two of tuberculosis, complicated by heavy drinking.⁸



HUGH C.
MURRAY

The honor of being the first justice to be elected by the people belonged to Solomon Heydenfeldt, who was elected in 1851 to succeed Hastings. As noted above, Heydenfeldt was granted a leave of absence from his duties in 1852 in order to return to Alabama to get his family (during which time Alexander Wells served as temporary justice, as noted above). Heydenfeldt served until January 1857 when he resigned; during his five years on the Court he wrote some 450 opinions, generally marked by their brevity and soundness. A South Carolinian by birth, Heydenfeldt was extremely pro-Southern, almost to the point of being a Secessionist; he refused to take the test oath of loyalty, and consequently was not able to practice law in California during the Civil War, although he remained in the state.



SOLOMON
HEYDENFELDT

Alexander Anderson, a native of Tennessee, was the only member of the Supreme Court to be born prior to 1800. He had fought with Andrew Jackson at New Orleans, and was later a United States senator from his native state.

⁸ Ibid., 43.

Arriving in California in May 1850, he was by September of 1851 an elected member of the State Senate from Tuolumne County. He was appointed to succeed Henry A. Lyons in April 1852 until a successor could be elected to finish the term. Anderson wanted this position himself, but lost the Democratic nomination to Alexander Wells, who won the election as well. After leaving the Court in January 1853, Anderson left California completely.

Alexander Wells arrived in California in 1849 from New York City, where he had been active in politics, being associated with Tammany Hall. As mentioned above, he served temporarily on the Court during Solomon Heydenfeldt's absence, and was elected to finish Henry A. Lyon's term. In 1853 he was elected to a full six-year term, but he served less than a year of the new term, dying suddenly in October 1854.

Wells' death brought about the appointment of Charles H. Bryan to the Court by Governor John Bigler. Bryan had come to California from Ohio in 1850 or 1851, settling in Marysville where he practiced law. He became district attorney of Yuba County in 1852, and in 1853 he was elected to the State Senate. Once on the Supreme Court he attempted to succeed himself and finish Wells' term; he was the candidate of the Democratic Party, but lost the election to the Know-Nothing candidate, David S. Terry. Bryan was considered an outstanding lawyer, but his career on the bench, although lasting only a year, "was nevertheless a disappointment to those who had beheld his brilliant performances at the bar. It was the consensus of opinion that he did not show much aptitude for judicial work."⁹

The man who defeated Charles Bryan in the 1855 election, David S. Terry, was possibly both the most controversial and colorful figure ever to become a justice in California. While on the California Supreme Court, he killed a United States senator in a duel, and had been imprisoned, tried, and convicted of stabbing a member of the Vigilantes. Terry was born in Kentucky in 1823, moving to Texas with his mother in 1835, where he fought in the Texas War of Independence when he was but thirteen. He came to California in 1849, settling down to the practice of law in Stockton, where a number of Southerners had settled. When he won the 1855 election, he was thirty-two, and during his first year on the bench he became involved with the Vigilantes. On Hugh C. Murray's death in 1857, Terry

⁹ Johnson, *Supreme Court Justices*, vol. 1, 50.

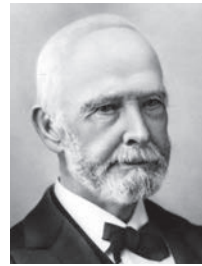
became chief justice. “Terry’s greatest attribute as a judge was his personal integrity.”¹⁰ This statement by J. Edward Johnson may not do Terry justice, for even Stephen J. Field’s biographer wrote that Terry was “a man with a great deal of legal ability.”¹¹ Terry believed very strongly in the separation of powers in a state, and was not interested “in unduly increasing the authority of the supreme court at the expense of lower courts.”¹²

In 1859, Terry lost the Democratic nomination to Warner W. Cope, but did not finish his term in office, resigning in September when he took part in the famous duel with David C. Broderick. After the duel, Terry left for Nevada, returning to Texas during the Civil War to serve in the Confederate army. After the South was defeated, Terry went to Mexico, but eventually returned to Stockton to practice law. He became the lawyer for Sarah Hill against William Sharon, an association that was to cost him his life; he was fatally shot by the bodyguard of Stephen J. Field, then a United States Supreme Court justice, as the result of an unfavorable decision rendered by Justice Field.

One of Terry’s associates on the Supreme Court was Peter H. Burnett, California’s first governor, who was twice appointed to the bench. Governor J. Neely Johnson appointed Burnett in January 1857 to replace the resigned Solomon Heydenfeldt. Burnett resigned in October of that year to allow the appointment of Stephen J. Field who had been elected to a full term, and the next day Governor Johnson appointed Burnett to take Hugh C. Murray’s place. Burnett remained on the Court until October 1858 when he again resigned so that Joseph G. Baldwin, who had been elected to finish Murray’s term, could be appointed. There are conflicting views as to Burnett’s judicial ability. J. Edward Johnson wrote that “his



DAVID S.
TERRY



PETER H.
BURNETT

¹⁰ Ibid., 56.

¹¹ Carl B. Swisher, *Stephen J. Field; Craftsman of the Law* (Washington, D.C.: The Brookings Institution, 1930), 73.

¹² A. Russell Buchanan, *David S. Terry of California* (San Marino: The Huntington Library, 1956), 73.

opinions are of a high quality.”¹³ Terry’s biographer, A. Russell Buchanan, said that Burnett was “generally considered to have been well-meaning and honest but not exceptionally able.”¹⁴ Carl Swisher wrote in the same vein that Burnett “was probably a fair administrator and a man of sound integrity, but he was not more than “mediocre in his capacity as a Judge.”¹⁵ Most of the criticism of Burnett was based on his refusal to apply the law strictly in the Archy slave case.¹⁶ Burnett himself did not even mention being on the Supreme Court in his memoirs.¹⁷

The position of justice of the Supreme Court was one to challenge the best of men. The Court was faced with new types of situations which were quite puzzling. Even though the common law had been adopted, problems arose that were different from those that had been settled by use of the common law. True, there were principles that could be used, but they were not always in harmony with one another. The judges had to select the principles that would provide the greatest welfare for the state. Thus, recognition by the justices of the state of affairs was, in a sense, as important as their legal knowledge. These considerations helped make the Supreme Court influential as a legislative as well as a judicial body.¹⁸

The most prominent of the justices to sit on the Court in the period of this study was Stephen J. Field, who was chief justice from 1858 to 1863. Field was one of five sons of a well-known New England clergyman, but he was not the only one of his brothers to gain national recognition. His eldest brother, David Dudley Field, was a prominent member of the New York Bar and was responsible for codifying New York’s laws, and Cyrus West Field was to become a well-known New York financier and merchant and promoter for the laying of the Atlantic cable. Field practiced law in New York with his brother David Dudley for several years before coming to California in 1849; these were also the years in which the elder brother was proceeding on his work of codification. Field settled in Marysville

¹³ Johnson, *Supreme Court Justices*, vol. 1, 63.

¹⁴ Buchanan, *David S. Terry*, 72.

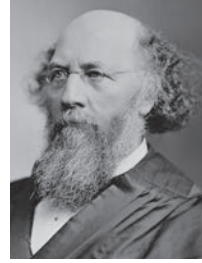
¹⁵ Swisher, *Stephen J. Field*, 73.

¹⁶ *Ex parte Archy* (1857), 9 Cal. 147.

¹⁷ Peter H. Burnett, *Recollections and Opinions of an Old Pioneer* (New York: D. Appleton and Company, 1880).

¹⁸ See Swisher, *Stephen J. Field*, 75.

and was elected alcalde there soon after his arrival. He was a member of the State Assembly, where he served on the Judiciary Committee, taking the lead in the preparation of the civil and criminal practice acts, both of which were based on the work of his brother, David Dudley. A most important and far reaching part of the civil practice act was the section upholding local mining laws and customs as legally binding in mining cases.¹⁹ In 1857, the Democrats nominated Field for the Supreme Court,²⁰ and he was elected for the term of office that was to begin January 1858. Peter H. Burnett, who was occupying that seat on the Court, resigned to allow Governor J. Neeley Johnson to appoint Field until Field's elected term began. Field served until appointed to the United States Supreme Court by President Abraham Lincoln in 1863. While on the California Supreme Court bench, Field's most important work lay in stabilizing California land titles and interpreting the laws involving water and mineral rights.



STEPHEN J.
FIELD



JOSEPH G.
BALDWIN

Field's best work probably took place during the years that Joseph G. Baldwin served with him in the Court. Baldwin practiced law in Mississippi and Alabama for nearly twenty years before coming to California in 1854, and had served in the Alabama Legislature in the mid-1840s. While living in the South, he also managed to write and have published two volumes of sketches, the most famous of which was *Flush Times in Alabama and Mississippi*. Baldwin's writings, according to one historian, made him one of the "heralds of realism in literature" in the rebellion against literary traditionalism.²¹ Baldwin wrote some 550 opinions from October 1858 to December 1861, when he left the Court, having declined to run for reelection. In the period during which the three-man Court functioned, Baldwin was considered to be second only to Field in

¹⁹ Cal. Stats. (1851), chap. 5, § 621.

²⁰ Winfield J. Davis, *History of Political Conventions in California, 1849-1892* (Sacramento: The California State Library, 1893), 77.

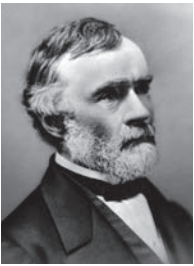
²¹ Ray Allen Billington, *America's Frontier Heritage* (New York: Holt, Rinehart and Winston, 1966), 93.



WARNER W.
COPE

ability, and “did much to give the Court standing before the public.”²²

Forming a most harmonious triumvirate with Field and Baldwin was Warner W. Cope, who was nominated in 1859 by the Lecompton Democrats over the controversial David S. Terry, then chief justice.²³ Cope won the election, and when Terry resigned because of his duel with David C. Broderick, Cope was appointed to the vacancy by Governor John B. Weller. When Field moved to the federal bench, Cope became chief justice, serving in that capacity until the five-man Court commenced in 1864. After leaving the Court, Cope remained active in the law, in private practice, as one of the original trustees of the Hastings College of the Law, president of the San Francisco Bar Association, and Supreme Court reporter for volumes 63 to 72 of the *California Reports*.



EDWARD
NORTON

Baldwin’s successor was Edward Norton, a New Yorker, who practiced law with marked success both in his native state and California before joining the ranks of the judiciary. He was the first judge of the Twelfth District, serving in that capacity the entire decade of the 1850s, and gaining renown as a fine jurist. After refusing to stand for election to succeed himself, he went to Europe for a vacation. While abroad, he was nominated by the Republican party to the Supreme Court, and was elected in 1861, but was not able to equal the acclaim received for his earlier judicial work. Norton did not get along with Field; the latter questioned Norton’s ability for appellate work. Field wrote:

This gentleman was the exemplar of a judge of a subordinate court. He was learned, patient, industrious, and conscientious; but he was not adapted to an appellate tribunal. He had no confidence in his own unaided judgment. He wanted someone upon whom to lean. Oftentimes he would show me the decision of a tribunal of no reputation with apparent delight, if it corresponded with his own views, or with a shrug of painful doubt, if it conflicted with them. He would

²² Swisher, *Stephen J. Field*, 74.

²³ Davis, *Political Conventions*, 104.

look at me in amazement if I told him that the decision was not worth a fig; and would appear utterly bewildered by my waywardness when, as was sometimes the case, I refused to look at it after hearing by what court it was pronounced.²⁴

Acceptance of Field's comment must be tempered by the realization that Field and Baldwin were very close personal friends as well as associates on the Court; Baldwin took Field's name for one of his sons, Sidney Field Baldwin. Field notwithstanding, Norton served until the constitutional amendments went into effect in January 1864.



EDWIN BRYANT
CROCKER

Field's own replacement on the Court was also a New Yorker, Edwin Bryant Crocker. Crocker received a degree in civil engineering from Rensselaer Institute, but became unhappy with engineering, and decided to enter the law profession. He read law in Indianapolis, where his family was then living, and settled down to practice law until 1852 when he came to California. While living in Indiana, Crocker became active in the anti-slavery movement and aided fugitive slaves on their way to Canada. In California, Crocker settled in Sacramento, where his brother Charles and Leland Stanford were establishing their mercantile business. Crocker practiced law and became active in politics, being one of the founders of the Republican party in the state. He remained active in the party and was a firm Lincoln supporter. When Field was appointed to the federal bench, Stanford, then governor of California, appointed Crocker an associate justice, although he was to serve only the seven months until the new Court was inaugurated. In those seven months, though, Crocker wrote 237 opinions that appeared in the *Reports*. This production did not go without public comment; Crocker was criticized for his speed at reaching decisions and writing opinions, a far cry from the usual complaint that the wheels of justice grind too slowly.²⁵

After leaving the Court, Crocker became attorney and general agent for the Central Pacific Railroad, and also became closely associated with his brother Charles in the actual building of the railroad. He spent part of the time in the field where construction was taking place, most probably

²⁴ Stephen Field, *California Alcalde* (Oakland: Biobooks, 1950), 85.

²⁵ Johnson, *Supreme Court Justices*, vol. 1, 87.

putting his engineering training to good use. Unfortunately, Crocker's rapid pace led to a collapse in 1868; he was unable to work the remaining seven years of his life. Crocker's involvement with the railroad enabled him to amass the largest fortune of any California Supreme Court jurist.

THE FIVE-MAN COURT

As noted earlier, the 1862 amendment to the article on the judiciary provided for five justices, each to serve ten years except that "those elected at the first election, who, at their first meeting, shall so classify themselves by lot that one Justice shall go out of office every two years. The Justice having the shortest term to serve shall be the Chief Justice."²⁶ The five men elected were Silas W. Sanderson, John Currey, Lorenzo Sawyer, Augustus L. Rhodes, and Oscar L. Shafter.

Silas W. Sanderson, the first chief justice under the amended Constitution, was born in Vermont, but studied law and was admitted to the bar in New York. He came to California in 1851 to try his hand at mining, but like other lawyers who made like attempts, he returned to the practice of law. In 1859 he was elected district attorney of El Dorado County, and later served in the Legislature, where he authored the specific contract law. On the Court he drew the short two-year term, ran for reelection, and won a full ten-year term. He served as an associate justice until 1870, when he resigned to become a counsel for the Central Pacific Railroad.

The man to draw the second shortest term was John Currey, another one of the New Yorkers to serve on the Court. In the 1850s, he practiced law in Benicia, where he handled much land-grant litigation. He received a percentage of the lands for which he settled the titles, and held several thousand acres of farmland which provided him an ample income for the rest of his long life. Currey unsuccessfully sought election to the Court in 1858, losing to Joseph G. Baldwin, and lost a bid for the governorship to Milton S. Latham in 1859. On the Court he served two years as an associate justice, and served as chief justice after Sanderson. He returned to private practice, retiring in 1880, and lived on the income from his land holdings until his death in 1912 at the age of ninety-eight.

²⁶ Cal. Const. (1849), art. VI, § 3 (Amend. 1862).

The third of the jurists to join the Court in 1864 was Lorenzo Sawyer, another native of New York, although educated in Pennsylvania and Ohio. He came to California in July 1850 and was elected city attorney of San Francisco little more than a year later. In May 1862, Governor Leland Stanford appointed Sawyer to fill the vacancy as judge of the Twelfth District. He held this post until he took his place on the Supreme Court. He served six years, the last two as chief justice, and ran for a ten-year term to succeed himself, losing to William T. Wallace. Sawyer had barely left the Court when he was appointed federal circuit judge for the Northern District of California, holding court in San Francisco. This was an important position because the circuit court had original federal jurisdiction in law, equity, and serious criminal cases and appellate jurisdiction over the district courts. One scholar has compared Sawyer's work on the state and federal benches by stating, "while Sawyer's work on the Supreme Court of California was important and creditable, his reputation mainly stems from his twenty years as a federal judge."²⁷

As a federal judge Sawyer often worked with Stephen J. Field, the circuit justice. Together they rendered decisions protecting the Chinese in California from discriminating legislation,²⁸ and in holding corporations to be artificial persons under the Fourteenth Amendment.²⁹ "The Field-Sawyer opinions thus today stand as the highest — indeed in most respects the only — authoritative judicial statement and justification of the corporate constitutional 'person.'"³⁰ Sawyer died in office in 1891.

The third native of the Empire State to be an original member of the reorganized Court was Augustus L. Rhodes. Educated in his native state, Rhodes read law in the South, and was admitted to the bar in Indiana, where he practiced until coming to California in 1854. Rhodes took up farming near San Jose, but the dry year of 1856 saw him return to the law, opening a practice in San Jose. His entry into California law practice was quickly followed by participation in politics, as in quick succession he was county

²⁷ Johnson, *Supreme Court Justices*, vol. 1, 96.

²⁸ *In re Ah Fona* (1874), 3 Sawyer 144; *Ho Ah Kow v. Nunan* (1879), 5 Sawyer 552.

²⁹ *County of San Mateo v. Southern Pacific R. R.* (1882), 8 Sawyer 238; *County of Santa Clara v. Southern Pacific R. R.* (1883), 9 Sawyer 165.

³⁰ Howard Jay Graham, "An Innocent Abroad: The Constitutional Corporate 'Person,'" *UCLA Law Review* II (February, 1955): 160.

attorney for Santa Clara County, district attorney, and state senator. In the latter capacity he served on the Judiciary Committee and helped prepare the constitutional amendments of 1862. Rhodes went directly from the Legislature to the Supreme Court, where he drew the next-to-longest or eight-year term. He served six years as associate justice, two as chief justice, and then eight more years as an associate justice by being reelected to a full term in 1871. He was the only man to serve for the entire sixteen-year existence of the five-man Court, but failed in his bid to become a member of the seven-man Court organized under the Constitution of 1879. Except for an eight-year period as a judge of the San Jose superior court from 1899 to 1907, Rhodes kept up his law practice until his death at the age of ninety-eight in 1918.

Like Silas W. Sanderson, Oscar Lovell Shafter was a native of Vermont, making that state and New York the birthplace of all five justices on the new Court. Unlike the other four, however, Shafter was born into a legal family, and rose to prominence himself in his native state. Shafter's father was a lawyer, judge, legislator, and unsuccessful gubernatorial candidate. Shafter was also the only one of the five justices to attend law school, and practiced successfully for some eighteen years before coming to California in 1854. He was unable to attain office in Vermont, although attempting to do so on several occasions. In California Shafter developed a lucrative practice, particularly in the area of land claim litigation. When elected to the Court in 1863, he drew the ten-year term, but resigned due to failing health in 1867, dying in 1873. Without citing specific instances, Oscar T. Shuck wrote:

While his methods at the bar — his investigation, his preparations, his presentation — were the admiration of his associates and of the judiciary, it must be recorded that his judicial career was a disappointment to the profession — that is, his judicial successes were not commensurate with his triumphs at the bar.³¹

The first man to come to the five-man Court after the initial justices was Royal Tyler Sprague, another native of Vermont. Sprague began his study of law after first teaching in New York state and operating a private school in Zanesville, Ohio. He was admitted to the Ohio Bar and practiced in Zanesville until 1849, when he left for California, arriving at Shasta.

³¹ Oscar T. Shuck, *History of the Bench and Bar of California . . .* (Los Angeles: The Commercial Printing House, 1901), 575.

He took a turn at mining, then business, but returned to law, and by 1851 already had a thriving practice. In 1850 Sprague helped organize Shasta township. Although defeated for county judge in 1850, and for Supreme Court positions in 1859 and 1863, Sprague served in the State Senate the third through the sixth Legislatures; in the last term he was president pro tem. He was elected to a ten-year term to the Court in 1867, beginning his service the following January. In 1872 he acceded to the position of chief justice, but died the next month, his death attributed to a heart condition.

The first man to “break” the New York–Vermont monopoly in the Supreme Court was Kentucky-born Joseph Bryant Crockett. Crockett was admitted to the bar in Kentucky, served in that state’s legislature, and was state’s attorney for his county, but even though he was well on the way to financial independence, he moved to St. Louis in 1848. His stay in Missouri lasted only until 1852, when he left for California, but in that brief period he served in the Missouri Legislature and edited a St. Louis newspaper. Settling in San Francisco, he joined the practice of Alexander Wells, the “interim” justice of the 1850s, and became involved in land grant litigation. In 1857 he formed a partnership with Joseph G. Baldwin until the latter’s elevation to the Supreme Court, and in December 1867 Crockett was himself appointed to the Court by Governor Henry H. Haight, a close personal friend, to replace the resigned Oscar L. Shafter. In the election of 1869 Crockett won a full ten-year term, which he completed, although he suffered from failing eyesight for several years. Crockett had a continuing interest in education and in helping young people. He represented the Court at the founding of the Hastings College of the Law, and was also instrumental in establishing the first industrial school for delinquents in San Francisco.

A second Kentuckian, William. T. Wallace, was the next justice to assume a place on the Court. Wallace arrived in California in 1850, when he was only twenty-two, but had already completed his legal training. He set up practice in San Jose, and in 1851 became district attorney for the third judicial district. In 1853 Wallace married a daughter of Peter H. Burnett, California’s first governor, a two-time appointee to the Court himself, and joined his father-in-law in practice. Two years later Wallace was elected attorney general, in which position he served two years, and then sought election to the Court three times, failing in 1861 and 1863, and defeating incumbent Lorenzo Sawyer in 1869 by 300 votes. Although elected to a full ten-year

term, Wallace actively sought to be sent to the United States Senate, and was in the running in both 1872 and 1879. Wallace was an associate justice for two years, and spent the remainder of his term as chief justice. After leaving the Court, Wallace remained active in politics and as a regent of the University of California. He and Stephen J. Field did not like each other, and Wallace actively opposed the other's presidential ambitions. In 1882 Wallace was elected to the Assembly, and two years later went to Washington to aid his friend Barclay Henry, who had been elected to Congress. Upon completing his stay in Washington, Wallace returned to San Francisco and was elected to the superior court, and it was as the presiding judge of the court that he led the grand jury investigation into San Francisco corruption.

Jackson Temple holds the distinction of having been a member of the Supreme Court on three separate occasions, although only once in the years before 1880. Temple was born in Massachusetts and educated at Williams College and Yale University, graduating in law from the latter institution. Immediately after graduation he left for California, arriving in San Francisco April 15, 1853. After staying in San Francisco for about six months, he moved to the area near Petaluma, where he joined his brothers, who had preceded him to California, in their ranching operations. This arrangement lasted about a year, after which time Temple entered the practice of law in Petaluma, then county seat of Sonoma. When the county seat moved to Santa Rosa he followed, and Santa Rosa was to remain his home for the rest of his life. Temple generally practiced in association with other lawyers, and tried to avoid criminal practice. Curiously enough, although Temple began his law work in California in 1855, he was not admitted to Supreme Court practice until 1859, which meant that for four years he could not appear before the state's highest tribunal. Thus, having associates who could continue with a case on appeal was a practical necessity. In 1867, when Henry H. Haight was about to run for governor, he offered his practice to Temple, who accepted and moved to San Francisco. Haight repaid Temple by appointing him to the Supreme Court when Silas W. Sanderson resigned. Temple only served two years, as his bid to succeed himself was defeated by Addison C. Niles at the October 1871 election. Haight and Jackson left office at the same time and they went into practice together in San Francisco, with Jackson returning to his Santa Rosa home on weekends. He later moved his practice to Santa Rosa, and in 1876 he was appointed a district judge, remained in the superior

court until 1886, and served on the Supreme Court from 1886 to 1889, and 1894 to 1902, each time by vote of the electorate.

Still another native of the Empire State to serve on the Court was Addison Cook Niles. Niles graduated from Williams College, read law in his father's office, and was admitted to the New York Bar, although he came to California instead of starting his practice. Niles arrived in the winter of 1854-55, settling in Nevada City, where his sister and her husband had settled. Niles' brother-in-law, Niles Searls, was also a cousin, and was himself to become a Supreme Court justice in 1887. Niles formed partnerships with various lawyers until 1862 when he was elected county judge, in which capacity he continued until winning election to the Supreme Court in 1871, defeating the incumbent Jackson Temple. Niles remained on the Court until the seven-man Court took office, and then returned to Nevada City. In the mid-1880s he moved to San Francisco where he maintained a small practice and assisted Warner W. Cope in reporting decisions of the Court.

Isaac S. Belcher, a graduate of the University of Vermont, came to California in 1853, after practicing in his native Vermont only briefly. He landed in San Francisco, went to Oregon for a month, and then tried his hand at mining on the Yuba River. He returned to the practice of law, though, settling in Marysville, where he also became active in Republican party politics and won several positions. In 1855 he was elected Yuba County's district attorney, in 1859 he was city attorney in Marysville, district judge from 1864 to 1869, and finally a justice on the Supreme Court, being appointed by Governor Newton Booth March 4, 1872. Belcher did not choose to succeed himself and returned to practice in Marysville, although he continued to be active in public affairs. In 1878 Belcher was elected a delegate to the Constitutional Convention, where he was one of the conservatives opposing many of the provisions of the Constitution. He unsuccessfully ran for one of the positions on the new Court. The 1885 Legislature passed an act authorizing the Supreme Court to appoint three commissioners to aid it with its work, and Belcher was one of those selected.³² "While Belcher had been a member of the Court two years, it was as a commissioner that

³² Cal. Stats. (1855), chap. 120.

he made the great judicial showing of his life.”³³ He continued his work as a commissioner until his death in 1898.

The last justice to take part in the deliberations of the Supreme Court prior to the adoption of the new Constitution was Elisha Williams McKinstry, a native of Michigan. He was educated in Michigan and Ohio, but read law and was admitted to the bar in New York. He came to California as a member of the international boundary commission, and stayed to become a leader of the California Bar. By 1850 he was in practice in Sacramento, and represented that community in the first Legislature. The next Legislature elected him adjutant general even though he was only twenty-four; he never entered office, though, because the Legislature neglected to provide a salary. In 1851 McKinstry shifted to Napa, practiced law there, and served as district judge for ten years. In 1862 he resigned to run for lieutenant governor in 1863. Defeated in that election, he went to Nevada, but failed there in a bid to be on that state’s high tribunal. McKinstry returned to California in 1867, locating in San Francisco. After his return he was, in successive order, county judge, district judge, justice on the five-man Court, and justice on the seven-man Court, the only justice to carry over directly to the new Court. In 1888 he resigned to join the faculty at Hastings College of the Law, while also maintaining his practice. In 1895 the trustees felt that faculty members should not also maintain practices, and McKinstry resigned. While on the Court, McKinstry wrote opinions for many important cases, most important of which was the key water rights case of *Lux v. Haggin*.³⁴

While it is admittedly difficult to generalize about the justices as a whole without more information about them, some conclusions may be essayed nonetheless from what is known. The most obvious factor was the relative youth of the justices; only Joseph B. Crockett, Edward Norton, and Royal T. Sprague had reached the half-century mark, while Warner W. Cope, Silas W. Sanderson, and Addison C. Niles were not yet forty.

Based on the available evidence, the backgrounds of the justices show a similar homogeneity. For one, twelve of the seventeen justices hailed from New England or New York, and ten of the twelve from either New York or

³³ Johnson, *Supreme Court Justices*, vol. 1, 122.

³⁴ *Lux v. Haggin* (1886), 69 Cal. 255.

Vermont. Of the five from other areas, one, Elisha McKinstry, although born in Detroit, came from an old New York family, and Virginia-born Joseph Baldwin could trace his ancestry to the early days of New England.

Not only was there a preponderance of men from the Northeast, it would also seem that these justices came from families long established in the New World, and were members of established religious groups. The family lineages of only six justices are known, and five of these were of old English stock that came to the New England–New York area early in the colonial period. The sixth, Kentuckian Joseph Crockett, was of Scotch-Irish and French extraction. The religious affiliations of six justices are definitely known. Two were Roman Catholics and the other four were members of established Protestant denominations: Congregational, Presbyterian, and Unitarian. Three justices whose religious preferences are not known were nonetheless buried in cemeteries belonging to Protestant groups. Absent were members of evangelical or revival groups. Interestingly enough, none of the six men whose religion is known were men who could trace their ancestry, although two of the men buried in Protestant cemeteries were of old English stock. The relative geographical homogeneity and what is already known about the religions and lineages of the justices probably indicate that even more justices came of old English stock and belonged to established religious groups.

To add to the similarities between the justices, all seventeen were born in rural areas, although only the fathers of Lorenzo Sawyer and Isaac Belcher were farmers. The rest lived in small towns, but by no means could rural life be equated with poverty. Several of the justices were born into educated, professional families. The fathers of Edward Norton and Addison Niles were lawyers, William Wallace's father was a doctor, and Stephen Field's father was a Congregational clergyman. In addition, Jackson Temple, Elisha McKinstry, and Joseph Crockett had fathers who were engaged in various types of business enterprises.

Elisha McKinstry and Addison Niles were both members of wealthy families, but the families of the other justices, if not wealthy, had the wherewithal to provide the future justices with some education. Eight of the men graduated from college, and three others spent at least some time as college students. The seven who did not attend college were by no means illiterate, however. Joseph Baldwin, for example, spent only a limited amount of time attending a common school in Virginia, but worked for a newspaper and

was able to write the critically acclaimed books mentioned earlier. Warner Cope attended an academy and was well grounded in the classics, while Lorenzo Sawyer was able to teach school without the benefit of a college education prior to his entry into legal studies.

The judges, then, were rural-born members of the middle class from New England or New York. They came from well-established families and belonged to established religious sects. None were themselves immigrants or members of newer evangelical groups. The lack of Southerners on the Court was probably no coincidence or mere accident due to the passage of a law requiring a loyalty oath of lawyers; the effect was to exclude many prominent men from judicial work during the Civil War years. Among those so affected were Solomon Heydenfeldt, the oft-traveling justice of the 1850s, and Gregory Yale, a noted expert on land and water law.³⁵ Without this law there probably would have been more Southerners on the Court, but it is doubtful that any of the similarities given would be affected except that of geography.

In discussing the beginnings of the California Supreme Court, writers often times use terms such as “unprecedented state of affairs” or “anomalous conditions” in California’s early years of statehood. These statements refer to the tremendous growth of population and other consequences of the discovery of gold. Many of the problems that arose were settled in the 1850s; others were not settled at all, and others incorrectly. An incorrect solution to a problem was not unique in the Western states where judicial experience was far more limited than in the older states of the union. Western courts, while continuing the use of precedents, realized that some of their early decisions were erroneous and had to be overruled. The California Supreme Court faced this problem in 1858, and stated that the doctrine of *stare decisis* was not to be used merely to protect a new innovation against a settled principle of law.³⁶ The period after 1859 saw the Court settle some old problems, such as the ownership of minerals on the public lands, and face new ones — such as the loyalty oath and greenback controversies of the Civil War period.

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³⁵ See *Ex parte Yale* (1864), 24 Cal. 241.

³⁶ *Aud v. Magruder* (1858), 10 Cal. 282.