in 1912 (thanks in part to the third-party candidacy of his erstwhile mentor, ex-president Theodore Roosevelt), Taft went on to teach law at Yale University and then to serve from 1921 to 1930 as chief justice of the U.S. Supreme Court.

Abraham Lincoln faced a different kind of challenge from a predecessor when he took office: After trying to mediate the North-South conflict, John Tyler (1841–45) won a seat in the first Confederate congress. But Tyler died before taking office and openly confronting Lincoln.

Tyler was one of five ex-presidents still living when Lincoln took office, a number that was matched only when Bill Clinton moved into the White House. As lengthening lifespans and voracious mass media expand the powers and the number of ex-presidents, it's not hard to imagine that some future presidents will look back on Tyler's timely expiration as a precedent that more should follow.

A Despotic Supreme Court?

"Lincoln on Judicial Despotism" by Robert P. George, in *First Things* (Feb. 2003), Institute on Religion and Public Life, 156 Fifth Ave., Ste. 400, New York, N.Y. 10010.

Nearly everyone today accepts the idea that the Supreme Court has the final word on what the Constitution permits and forbids. But Abraham Lincoln, and before him, Thomas Jefferson, held a very different view: They feared that judicial supremacy meant judicial despotism. And their fear was well founded, argues George, a professor of jurisprudence at Princeton University.

In *Marbury v. Madison* (1803), which invalidated the Judiciary Act of 1789, the Supreme Court, according to most scholars, established the Court's power of judicial review over acts of Congress and the president. Jefferson condemned the ruling and later said that the claimed power would have the effect of "placing us under the despotism of an oligarchy."

The next time the Court declared an act of Congress unconstitutional was in 1857, in *Dred Scott v. Sandford*. In a 7 to 2 decision, the Court ruled that slaves were personal property under the Constitution, so the (already repealed) Missouri Compromise, which outlawed slavery in federal territories, was unconstitutional. The Court not only sent Scott back into slavery but held that blacks could not be citizens. Most scholars today think that the *Dred Scott* case further polarized the country and made the Civil War "almost inevitable," George says.

Lincoln denounced the ruling repeatedly in his 1858 senatorial campaign, and also in his presidential campaign two years later. The evil, in his view, was not merely the expansion of slavery but judicial supremacy. Supreme Court rulings must be binding on the parties immediately involved, and treated with respect in parallel cases by other branches of government, he conceded in his 1861 inaugural address. But if government policy in vital matters "is to be irrevocably fixed by decisions of the Supreme Court" the instant they are made, he said, then "the people will have ceased to be their own rulers."

In office, George notes, Lincoln refused to treat the *Dred Scott* decision as binding on the executive branch. His administration issued passports to free blacks, thus treating them as citizens, and he signed legislation putting restrictions on slavery in the western territories.

Ironically, nearly a century later, in *Brown v. Board of Education* (1954), the Supreme Court, in ruling school desegregation unconstitutional, acted to advance racial equality and civil rights. And in a ruling four years later upholding that desegregation order, the Court unanimously asserted, for the first time, that "the federal judiciary is supreme in the exposition of the law of the Constitution."

Though the Court's stance in *Brown* is widely approved today, George says, the grave danger perceived by Jefferson and Lincoln, and exemplified by the *Dred Scott* decision, remains.