



Affirming Judicial Independence

Contextualizing the history of the Marshall Court Era within the larger history of the United States of America.

“My gift of John Marshall to the people of the United States was the proudest act of my life.”

-John Adams, President

In the early years of the United States, the country wrestled with the scope and powers of each of the three branches of government established under the Constitution—Legislative, Executive, and Judicial—as well as the relationship between the national, or federal, government and the state governments. At the center of these struggles for the Judicial Branch and the Supreme Court of the United States was its Chief Justice, John Marshall. President John Adams appointed Marshall to serve as Chief Justice in 1801 to succeed Chief Justice Oliver Ellsworth (who had been given a new appointment as Minister to France). Marshall and the Court faced many formative issues, both immediately and over the 34 years he served as Chief Justice. Those issues ranged from the practical, including where the Court would meet and hear cases, to the profound, including the Court’s authority to review whether laws passed by Congress were Constitutional and whether it could review decisions from state courts that posed Constitutional issues. For much of his tenure, Chief Justice Marshall was able to unify the Justices and issue unanimous decisions, thereby increasing the Court’s power and visibility.

Almost immediately upon his appointment, Marshall faced a defining moment for the country’s form of government and the Supreme Court’s role in it. When President Adams lost his re-election bid to Thomas Jefferson in 1800, the country experienced its first transfer of power from one political party to another. As Adams, a **Federalist**, left office he and Congress attempted to secure their federalist legacy by passing the Judiciary Act of 1801 which enabled him to appoint numerous life-tenured judges and magistrates to the Judiciary. Some of the “last-minute” appointments by Adams were not delivered before President Jefferson took office and he did not honor those appointments. One appointment was for William Marbury who then sought to enforce his appointment by bringing an enforcement action to the Supreme Court. The case, *Marbury v. Madison*, has become one of the most well-known and influential decisions issued by the Court. Chief Justice Marshall wrote for the Court that although Marbury was entitled to his appointment, the provision of law in the Judiciary Act of 1801 on which Marbury relied to enforce his commission was unconstitutional. In short, the Court demonstrated that it had the authority to review Acts of Congress for their constitutionality. This is still an enormous power vested in the Judicial Branch that gives it equal status with the Legislative (Congress) and Executive (President) Branches.

One of the practical issues facing Marshall and the Supreme Court early in Marshall's tenure was where the Court would sit. For a time, the Supreme Court was in New York, then moved to Philadelphia, before finally settling in the basement of the new Capitol Building in 1810 in the District of Columbia. The Supreme Court was forced to relocate temporarily after the United States' entrance into the **War of 1812**, when the British set fire to the Capitol in 1814.

Other practical challenges in the early years of the country and Court's history were created by both the modest judicial salaries and circuit duties of the Justices. The first **Judiciary Act of 1789** required the Supreme Court Justices to preside over **circuit courts** scattered throughout the country, which often meant months of ragged travel. After jolting in stagecoaches over unpaved, bumpy roads or helping to lift their stagecoach from swampy mud, the Justices struggled to find rest, often in overcrowded inns. Exhausted by the hardships of travel, Justices often arrived at the circuit courts too late or too sick to hear all the cases waiting for them. Still, their visits showed local people the authority and role of the new federal judiciary. The difficult and unrewarding nature of being a Justice in the early years of the Court created a lot of turnover. In the first eleven years of the Supreme Court's existence twelve different Justices served on the six-member Court.

These hardships endured by the Justices also created inconsistency in the **Terms** of the Court's sessions. Some of its Terms ended early, some were canceled due to disease outbreaks, and few notable decisions were made. Notwithstanding these challenges, under John Marshall's leadership over a period of 34 years on the Court, the Supreme Court grew in stature and became more unified, issuing 1,042 unanimous decisions that established the **precedents** that built the foundation of the federal judiciary. Among his efforts to unify the Court, Chief Justice Marshall insisted the Justices live together in a boarding house, which helped build their relationships.

Many of the more profound issues the Court was called upon to resolve during the first half of the 19th century were generated by the country's expansion, both economically and territorially. Congress also expanded the Court's domain in 1807 by adding a new seat to preside over a new Western circuit composed of Kentucky, Tennessee, and Ohio, bringing the number of justices to seven. The Supreme Court navigated some concerns of its own during this period too, including the first and only **impeachment** trial of a Justice when Justice Samuel Chase was accused of partisan behavior on the bench. Justice Chase was not convicted.

After the War of 1812, the U.S. struggled financially, prompting Congress to charter the **Second Bank of the United States**. This led to a conflict between the federal and state governments. When Congress' authority to create the Bank was challenged, the Marshall Court held in *McCulloch v. Maryland* (1819) that Congress had the power to create the Second Bank under the Constitution and that states could not tax it or otherwise make its operation difficult. That same year, the Court also affirmed that the **Contracts Clause** in the Constitution protects private contracts and that states could not encroach on property rights for private colleges and corporations in its *Dartmouth College v.*

Woodward (1819) decision. Sectional strife plagued the young republic and territorial expansion threatened to tear the barely united nation apart. The southern slave-states saw the Supreme Court's decisions in such cases as *McCulloch* and *Dartmouth College*, in which federal authority was upheld, as a potential challenge to their way of life. They saw the Court's recognition of these Congressional powers as an indication that Congress might also pass measures to limit or possibly eliminate slavery. Additionally, the population was increasing rapidly, and western expansion was leading to the creation and admission of new states causing additional political conflict. The **Missouri Compromise** was passed in 1820 as a solution and provided that for every free state that joined the Union a slave state would also be admitted. Under this compromise, Missouri was admitted as a slave state and Maine was admitted as a free state.

In 1821, in *Cohens v. Virginia* the Marshall Court confirmed that it could review appeals of cases arising in state courts that posed federal questions. Chief Justice Marshall firmly declared that the Supreme Court can hear all cases involving Constitutional questions. He also held that state laws and constitutions which conflicted with the Constitution were "absolutely void." In 1824, the Court issued an important decision in *Gibbons v. Ogden* that protected businesses against regulations that discriminated against out-of-state companies. Two steamboat companies, one with a New York State license and one with a federal license, had been competing over business in New York waters. In ruling that New York state did not have the power to regulate interstate navigation, Marshall once again relied on the Constitution, which gives Congress power to regulate **commerce** among the states. This included, the Court ruled, the power to regulate the operation of steamboats between New York and New Jersey. After the decision, the steamboat *United States* was greeted with cheers as she sailed triumphantly into New York Harbor, her crew firing a salute and her passengers "exulting in the decision of the United States Supreme Court."

"Well John Marshall has made his decision, now let him enforce it."

-President Andrew Jackson (rumored)

In 1828, a wave of **populism**, culminating in the election of Andrew Jackson coupled with new judicial appointments and new crises, brought different challenges to the legacy of the Marshall Court. While *Cohens* (and *Fletcher v. Peck*) confirmed the power of the Court to overrule state laws deemed unconstitutional, that power was tested when Georgia ignored federal treaties and forced Native American nations from their land. Some Native Nations eventually and begrudgingly sold their territory to Georgia and moved west, but the Cherokee were determined to remain. The Cherokee Nation had the **1791 Treaty of Peace and Friendship** to justify their possession of the land, however, the discovery of gold on that land in 1829 sparked strong economic incentives for some in Georgia to ignore federal law, defy federal authority, and expel Native Americans from their lands.

Two significant Supreme Court cases that challenged state government jurisdiction in relation to Native American Nations emerged, *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832). In

the first case, the Justices of the Marshall Court questioned whether the Court had the jurisdiction over the dispute, and a divided Court ruled that the Cherokee Nation did not have the right to sue a U.S. state. The following year, in the second case, however, an almost unanimous Court ruled the Georgia law unconstitutional, siding this time with the Cherokee Nation. The Court's opinion in the Worcester case defined Native American territories as separate entities that cannot be regulated by state governments. The ruling ignited calls for a civil war and both the Georgia government and President Andrew Jackson ignored the tension and the decision in *Worcester* for months. In 1835, fewer than 3% of the Cherokee people signed a new treaty and agreed to move west. Congress narrowly confirmed it and, while the majority of the Cherokee continued to resist, the United States military enforced the Indian Removal Act of 1830, and the Cherokee were pushed west on the Trail of Tears.

In the 34 years of the Marshall Court, Chief Justice John Marshall articulated the Supreme Court's authority as the interpreter of the Constitution. With the influence of skilled oral advocates like Daniel Webster and William Pinkney, Justices of the Marshall Court such as Bushrod Washington and Joseph Story drafted opinions that determined the jurisdiction of federal courts and protected the supremacy of the Constitution and federal law where appropriate. The Marshall Court era ended in 1835 with the death of John Marshall, to date the longest serving Chief Justice in American history. Though the Court was little known in its early years, it emerged as a truly co-equal and independent branch of government under the unifying guidance of Chief Justice Marshall.

Vocabulary

- **Federalist:** a member of one of the earliest American political parties who supported a strong central government.
- War of 1812: a war fought between the United States of America and its Native allies against Great Britain and its Native allies in British North America.
- **Judiciary Act of 1789:** a law that established the structure and jurisdiction of the federal court system.
- **Circuit Courts:** a court with the authority to review disputes brought up in a previous trial.
- **Term:** the time during which the Supreme Court is hearing cases. By statute, the modern term begins on the first Monday in October and usually lasts until June or July.
- **Precedents:** a previous case or legal decision that may be or (binding precedent) must be followed in subsequent similar cases.
- **Impeachment:** process by which a legislative body (Congress) initiates charges against a public official such as a President, Member of Congress, or Federal Judge for misconduct.
- **Acquittal:** a judgment that a person is not guilty of the crime with which the person has been charged.
- **Second Bank of the United States:** the national bank of America that held the nation's deposits and made its payments. It was in Philadelphia, Pennsylvania and chartered from 1816-1836.

- **Contracts Clause:** (Article I, Section 10) No state shall pass any law impairing the obligations of contracts.
- **Missouri Compromise:** federal law that balanced the desires of the northern states to prevent the expansion of slavery with the southern states desire to expand slavery.
- **Commerce:** the buying and selling of goods between two or more parties.
- **Populism:** a political approach that seeks to appeal to ordinary people who feel ignored by “elite” groups.
- **1791 Treaty of Peace and Friendship:** a treaty between the President of the United States and the Chiefs and Warriors of the Cherokee Nation.
- **Oral Advocate:** an attorney who presents legal briefs and arguments at an appellate level.

Questions

1. Why do you think President Adams viewed the appointment of Chief Justice Marshall as a “gift”?
2. How did the status and authority of the Supreme Court evolve during this era?
3. Describe the impact of the election of Andrew Jackson on both the Supreme Court and the federal government.
4. What actions by Marshall Court Justices helped the Supreme Court to establish itself as a co-equal branch of government?